

**2007 DRAFTING REQUEST**

**Bill**

Received: **09/08/2006**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Sheldon Wasserman (608) 266-7671**

By/Representing: **Staphanie Hilton**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - miscellaneous**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Guardianship and parenting classes for child parents

---

**Instructions:**

See Attached--redraft 05-3387/3

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**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 09/11/2006	kfollett 09/12/2006		_____			S&L
/1			rschluet 09/13/2006	_____	lparisi 09/13/2006		S&L
/2	gmalaise 02/21/2008	kfollett 02/22/2008	nnatzke 02/22/2008	_____	lparisi 02/22/2008	sbasford 03/07/2008	

FE Sent For:

*at no*  
*3/13*

**<END>**

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Identical to LRB:

For: **Sheldon Wasserman (608) 266-7671**

By/Representing: **Stephanie Hilton**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - miscellaneous**

Extra Copies:

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/?	gmalaise 09/11/2006	kfollett 09/12/2006		_____			S&L
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				_____			
				nwn/ps 2/22			

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Guardianship and parenting classes for child parents

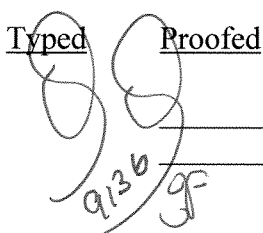
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**Instructions:**

See Attached--redraft 05-3387/3

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/?	gmalaise	11/15/06 9/12					

FE Sent For:

<END>

**Malaise, Gordon**

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**From:** Hilton, Stephanie  
**Sent:** Wednesday, August 30, 2006 2:51 PM  
**To:** Malaise, Gordon  
**Cc:** Hilton, Stephanie  
**Subject:** Rep. Wasserman re-draft request

Hi Gordon,

Rep. Wasserman would like to re-draft 2005 LRB-3387/3 for the 2007-08 legislative session. Let me know if you have any questions!

Thanks for your help,  
Stephanie

Stephanie R. Hilton  
Legislative Assistant  
Office of Rep. Sheldon Wasserman  
Room 214 North  
Phone: (608) 266-7671 or (888) 534-0022  
Fax: (608) 282-3622

# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: GMM) (Date: 9/8/06)



Please transfer the drafting file for  
2005 LRB -3387 to the drafting file  
for 2007 LRB -0167

The final version of the 2005 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

**--OR--**

Please copy the drafting file for  
2007 LRB / one (include the version) and place it in the  
drafting file for 2007 LRB

For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.



2005 - 2006 LEGISLATURE

DN-IE

01/67/1  
LRB-5387/S  
GMM:kjf:ls  
m

# 2005 BILL

PWF

Regen

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 has no custodial parent who is 16 years of age or over and requiring the  
 5 parent 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 does not have a custodial parent over 16 years of age or 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 custodial parents of the child. If the juvenile court finds that the child does not have a custodial parent over 16 years of age or 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 serve as guardian of the child, the juvenile court finds that

**BILL**

*of*  
*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*

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 all custodial parents of the child attain the age of 18 years, unless the juvenile court earlier terminates the guardianship, including termination due to removal of the guardian for cause or resignation of the guardian.

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. 880 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:

15           48.185 (2) In an action under s. 48.41, 48.978, or 48.979, venue shall be in the  
16 county where the birth parent or child resides at the time that the petition is filed.

✓ (54) ← plain

← plain

(12)

**BILL**

1 Venue for any proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under  
2 subch. VIII when the child has been placed outside the home pursuant to a  
3 dispositional order under s. 48.345 or 48.347, shall be in the county where the  
4 dispositional order was issued, unless the child's county of residence has changed,  
5 or the parent of the child or the expectant mother of the unborn child has resided in  
6 a different county of this state for 6 months. In either case, the court may, upon a  
7 motion and for good cause shown, transfer the case, along with all appropriate  
8 records, to the county of residence of the child, parent or expectant mother.

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

10 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is  
11 the subject of a proceeding to terminate parental rights, whether voluntary or  
12 involuntary, for a child who is the subject of a contested adoption proceeding and for  
13 a child who is the subject of a proceeding under s. 48.977 or, 48.978, or 48.979.

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

15 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at  
16 the fact-finding hearings under ss. 48.31, 48.42, 48.977 (4) (d) and, 48.978 (2) (e) and  
17 (3) (f) 2., and 48.979 (3) (e).

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

19 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
20 statutory rules of evidence are binding at a hearing for a child held in custody under  
21 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a  
22 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing  
23 about changes on a change in placement, a revision of a dispositional orders, order,  
24 or an extension of a dispositional orders, or order, a hearing on the revision or  
25 termination of a guardianship orders order entered under s. 48.977 (4) (h) 2. or (6)

**BILL**

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

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

12 **48.831 (1) TYPE OF GUARDIANSHIP.** This section may be used for the appointment  
 13 of a guardian of a child who does not have a living parent if a finding as to the  
 14 adoptability of a child is sought. Except as provided in ss. 48.977 and, 48.978, and  
 15 48.979, ch. ~~880~~ applies to the appointment of a guardian for a child who does not have  
 16 a living parent for all other purposes. An appointment of a guardian of the estate of  
 17 a child who does not have a living parent shall be conducted in accordance with the  
 18 procedures specified in ch. ~~880~~.

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

20 **48.979 Appointment of guardian for child of child parent. (1)**

21 **DEFINITION.** In this section, "custodial parent" means a parent who resides with a  
 22 child who is subject to a proceeding under this section.

23 **(2) GUARDIANSHIP AND PARENTING CLASSES REQUIRED.** (a) *Notice to county*  
 24 *department or department.* Whenever a child is born to a person under 16 years of  
 25 age at or on route to a hospital or maternity home, the hospital or maternity home

**BILL**

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

9 (b) *Determination whether guardianship and parenting classes required.*

10 Within 30 days after receiving a notice under par. (a), the county department or  
 11 department receiving that notice shall determine whether the child has a custodial  
 12 parent who is 16 years of age or over or a guardian, and, if the child does not have  
 13 a custodial parent who is 16 years of age or over or a guardian, file a petition under  
 14 sub. (3) (a) for the appointment of a relative of the child or other fit and willing adult  
 15 to serve as guardian of the child and offer parenting classes to the custodial parent  
 16 of the child.

17 (3) APPOINTMENT OF GUARDIAN. (a) *Filing of petition.* If a county department  
 18 or the department determines under sub. (2) (b) that a child does not have a custodial  
 19 parent who is 16 years of age or over or a guardian, the county department or  
 20 department shall file a petition for the appointment of a relative of the child or other  
 21 fit and willing adult to serve as guardian of the child.

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

. If

the county department  
or department  
shall

**BILL**

- 1 1. The name, birth date, and address of the child.
- 2 2. The name and address of the custodial parent or parents of the child.
- 3 3. The name and address of the person nominated as guardian of the child.
- 4 4. A statement that the child has no custodial parent who is 16 years of age or
- 5 over or guardian.

6 5. A statement of whether the proceedings are subject to the uniform child  
7 custody jurisdiction act under ch. 822. and Enforcement

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

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

- 13 a. The child's guardian ad litem.
- 14 b. The custodial parent or parents.
- 15 c. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.,  
16 if those persons can with reasonable 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.

**BILL**

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 under par.

8 ~~(f)~~ *(f) If a party requests an adjournment, the court shall set a date for the*  
9 *dispositional hearing which allows reasonable time for the parties to*  
*prepare but is no more than 30 days after the plea hearing.*

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

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

23 (f) *Dispositional hearing.* The court shall hold a dispositional hearing on the  
24 petition at the time specified under par. (d) 2. or (e), at which any party may present  
25 evidence, ~~including expert testimony~~, relevant to the disposition. ~~If at the plea~~  
~~hearing or the fact-finding hearing a party requests an adjournment of the~~

**BILL**

1 ~~dispositional hearing, the court shall set a date for the dispositional hearing that~~  
 2 ~~allows reasonable time for the parties to prepare but is no more than 30 days after~~  
 3 ~~the plea hearing or fact-finding hearing.~~

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 ~~under sub. (4) (b)~~ if the court determines that such an  
 21 appointment is in the best interests of the child. Appointment

22 (4) PARENTAL RIGHTS; DUTY AND AUTHORITY OF GUARDIAN. (a) *Parental rights.* The  
 23 ~~beginning of the duty and authority~~ of a guardian under sub. (3) does not, in itself,  
 24 divest a parent of any parental rights. ✓



Insert 9-5

**BILL**

1 (b) *Duties and authority of guardian.* A guardian appointed under sub. (3) shall  
2 have all of the duties and authority specified in s. 48.023.

3 (5) **TERMINATION OF GUARDIANSHIP.** (a) *Term of guardianship.* A guardianship  
4 under this section shall continue until all custodial parents of the child attain the age  
5 of 18 years or until terminated by the court, whichever occurs earlier.

6 (b) *Removal for cause.* 1. The petitioner under sub. (3) (a) may request that  
7 a guardian appointed under sub. (3) be removed for cause or the court may, on its own  
8 motion, propose such a removal. The request or court proposal shall allege facts  
9 sufficient to show that the guardian is or has been neglecting, is or has been refusing,  
10 or is or has been unable to discharge the guardian's trust and may allege facts  
11 relating to any other information that affects the advisability of the court's  
12 disposition.

13 2. The court shall hold a hearing on the matter unless written waivers of  
14 objections to the removal are signed by all parties entitled to receive notice under  
15 sub. (3) (c) and the court approves the waivers.

16 3. If a hearing is to be held, the court shall notify the persons entitled to receive  
17 notice under sub. (3) (c) at least 7 days <sup>before</sup> prior to the hearing of the date, place, and  
18 purpose of the hearing. A copy of the request or court proposal shall be attached to  
19 the notice. The court shall remove the guardian for cause if, at the hearing, the court  
20 finds that it has been proved by clear and convincing evidence that the guardian is  
21 or has been neglecting, is or has been refusing, or is or has been unable to discharge  
22 the guardian's trust and if the court determines that removal of the guardian would  
23 be in the best interests of the child.

24 (c) *Resignation of guardian.* A person who is appointed as a guardian under  
25 sub. (3) (h) 2. may, at any time after his or her duty and authority as guardian begin,

**BILL**

1 resign that appointment by executing a written resignation, filing the resignation  
 2 with the court that issued the guardianship order, and notifying the petitioner in  
 3 writing of that resignation. On compliance with this paragraph, the court may  
 4 accept the resignation and rescind the guardianship order if the court determines  
 5 that the resignation and rescission are in the best interests of the child.

6 ~~(d) Termination of guardianship on termination of parental rights.~~ If a court  
 7 enters an order under s. 48.42<sup>✓</sup> (3p) or 48.428 (2) (b), the court shall terminate the  
 8 guardianship under this section. (54)

9 (6) RELATIONSHIP TO CH. ~~880~~ (a) Except when a different right, remedy, or  
 10 procedure is provided under this section, the rights, remedies, and procedures  
 11 provided in ch. ~~880~~<sup>(54)</sup> shall govern a guardianship created under this section.

12 (b) This section does not abridge the duties or authority of a guardian appointed  
 13 under ch. ~~880~~<sup>(54)</sup>

14 (c) Nothing in this section prohibits an individual from petitioning a court for  
 15 the appointment of a guardian under ch. ~~880~~<sup>(54)</sup>

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

17 757.69 (1m) (e) Conduct hearings, make findings, or issue orders in  
 18 proceedings under s. 48.977 or, 48.978, or 48.979.

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

20 808.075 (4) (a) 13. Termination of a guardianship order under s. 48.979 (5),  
 21 including removal of a guardian under s. 48.979 (5) (b) or rescission of a guardianship  
 22 order under s. 48.979 (5) (c).

23 (END)

D-Note

Insert 9-5

(no p) The court shall terminate a guardianship under  
 this section if any of the following occur:  
 if

1. The parental rights to the child of all living parents of  
 the child are terminated under s. 48.427 (3).  
 48.427 ✓  
 in the home of 48.977 (2)
2. The child is placed with a guardian under s. 48.977 (2)  
 with a fit and willing relative,  
 or ch. 54 or in some other alternative permanent placement.

(end of insert)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0167/1dn

GMM...*kj.f*

*Date*

Representative Wasserman:

X This redraft makes one minor substantive change to LRB05-3387/3. Specifically, the previous draft required a guardianship under the draft to be terminated if a court enters an order terminating parental rights (TPR) to the child. This draft, in addition, requires termination of a guardianship under the draft if a permanent guardian is appointed under s. 48.977 (2) or ch. 54 or if the child is placed with a fit and willing relative or in some other alternative permanent placement, in which cases a guardian under the draft would no longer be necessary. The permanency planning section of the Children's Code recognizes that TPR and adoption are not the only methods of achieving permanency for a child; rather, a child may also achieve permanency by placement with a guardian, relative, or other suitable person. See s. 48.38 (4) (fm).

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0167/1dn  
GMM:kjf:rs

September 13, 2006

Representative Wasserman:

This redraft makes one minor substantive change to LRB 05-3387/3. Specifically, the previous draft required a guardianship under the draft to be terminated if a court enters an order terminating parental rights (TPR) to the child. This draft, in addition, requires termination of a guardianship under the draft if a permanent guardian is appointed under s. 48.977 (2) or ch. 54 or if the child is placed with a fit and willing relative or in some other alternative permanent placement, in which cases a guardian under the draft would no longer be necessary. The permanency planning section of the Children's Code recognizes that TPR and adoption are not the only methods of achieving permanency for a child; rather, a child may also achieve permanency by placement with a guardian, relative, or other suitable person. See s. 48.38 (4) (fm).

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2/20/08

Elisa Peterson

- Remove alleged fathers from bill

= applies only to child whose mother is < 16

- Apply bill even to mother under 16 when ~~petition~~  
child is born

~~and~~ even if mother turns 16 during proceeding



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0167/1 (2)

GMM:kjfas

RMR

TODAY - Fri 2/22

2007 BILL

Regen

who is born to a mother

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 has no custodial parent, who is <sup>under</sup> 16 years of age or over and requiring the  
5 <sup>mother</sup> parent of such a child to complete a parenting class. <sup>who resides with his or her mother, and who does not have a guardian</sup>

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. <sup>is born to a mother under</sup> ~~who does not have a guardian~~

This bill requires the county department of human services or social services (county department) of the county of residence of a child who ~~does not have a custodial parent over~~ 16 years of age or 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 <sup>mother</sup> custodial parents of the child. If the juvenile court finds that the child ~~does not have a custodial parent over~~ 16 years of age or 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 serve as guardian of the child, the juvenile court finds that <sup>and does not have</sup> <sup>resides with his or her mother, and does not have a guardian</sup> <sup>was born to a mother under</sup>

**BILL**

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 ~~all~~ <sup>the mother</sup> ~~custodial parents~~ of the child attain 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:



**BILL**

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,

**BILL**

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 (3) (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 ~~DEFINITION.~~ In this section, "custodial parent" means a parent who resides with a  
 24 child who is subject to a proceeding under this section.

**BILL**

no # (1) (2)

mother

1 ~~(2)~~ GUARDIANSHIP AND PARENTING CLASSES REQUIRED. (a) Notice to county  
 2 department or department. Whenever a child is born to a ~~person~~ under 16 years of  
 3 age at or on route to a hospital or maternity home, the hospital or maternity home  
 4 shall, within 7 days after the birth of the child, provide notice of that birth to the  
 5 county department of the county of residence of the child or, if that county is a county  
 6 having a population of 500,000 or more, the department. Whenever a child is born  
 7 to a ~~person~~ under 16 years of age elsewhere than at or on route to a hospital or  
 8 maternity home, the physician, nurse-midwife, or birth attendant who attended the  
 9 birth of the child, shall, within 7 days after that birth, provide notice of that birth to  
 10 the county department of the county of residence of the child or, if that county is a  
 11 county having a population of 500,000 or more, the department.

resides with his or her mother and

12 (b) ~~Determination whether~~ guardianship and parenting classes required.  
 13 Within 30 days after receiving a notice under par. (a), the county department or  
 14 department receiving that notice shall determine whether the child has a ~~custodial~~  
 15 ~~parent who is 16 years of age or over or a guardian.~~ If the child ~~does not have a~~  
 16 ~~custodial parent who is 16 years of age or over or a guardian,~~ the county department  
 17 or department shall file a petition under sub. ~~(3)~~ (a) for the appointment of a relative  
 18 of the child or other fit and willing adult to serve as guardian of the child and offer  
 19 parenting classes to the ~~custodial parent~~ of the child.

resides with his or her mother and

mother

resides with his or her mother and

20 (3) APPOINTMENT OF GUARDIAN. (a) *Filing of petition.* If a county department  
 21 or the department determines under sub. ~~(2)~~ (b) that a child does not have a ~~custodial~~  
 22 ~~parent who is 16 years of age or over or a guardian,~~ the county department or  
 23 department shall file a petition for the appointment of a relative of the child or other  
 24 fit and willing adult to serve as guardian of the child.

(1)

**BILL**

1 (b) *Contents of petition.* A proceeding for the appointment of a guardian for a  
2 child under this subsection shall be initiated by a petition that shall be entitled "In  
3 the interest of .... (child's name), a person under the age of 18" and shall set forth with  
4 specificity all of the following: <sup>(, birth date,)</sup>

5 1. The name, birth date, and address of the child. <sup>mother</sup>

6 2. The name and address of the ~~custodial parent or parents~~ of the child.

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

8 4. A statement that the child has no ~~custodial parent who is 16 years of age or~~  
9 ~~over~~ or guardian.

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

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

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

17 a. The child's guardian ad litem.

18 b. The ~~custodial parent or parents~~.

19 c. ~~The~~ persons to whom notice is required to be given under s. 48.27 (3) (b) 1.,  
20 if those persons can with reasonable diligence be located.

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

22 2. Service shall be made by certified mail at least 7 days before the hearing or  
23 by personal service in the same manner as a summons is served under s. 801.11 (1)  
24 at least 7 days before the hearing or, if with reasonable diligence a party specified in  
25 subd. 1. cannot be served by mail or by personal or substituted service, service shall

*If the child's paternity has not been established, the*

*child's mother and, if the child's paternity has been established, the child's father*

**BILL**

1 be made by publication of a notice published as a class 1 notice under ch. 985. In  
2 determining which newspaper is likely to give notice as required under s. 985.02 (1),  
3 the petitioner shall consider the residence of the party, if known, or the residence of  
4 the relatives of the party, if known, or the last-known location of the party.

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

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

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

18 (e) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the  
19 petition on the date set by the court under par. (d) 3., at which any party may present  
20 evidence relevant to the <sup>issues</sup> issue of whether the child has a ~~custodial parent who is 16~~  
21 ~~years of age or over or a guardian.~~ If the court, at the conclusion of the fact-finding  
22 hearing, finds by clear and convincing evidence that the child has no ~~custodial parent~~  
23 ~~who is 16 years of age or over or guardian,~~ the court shall find that the child is in need  
24 of a guardian and immediately proceed to a dispositional hearing unless an  
25 adjournment is requested. If a party requests an adjournment, the court shall set

whether the child resides with his or her mother,

was born to a mother under 16 years of age, and whether the child

was born to a mother under 16 years of age, and resides with his or her mother, and

**BILL**

1 a date for the dispositional hearing which allows reasonable time for the parties to  
2 prepare but is no more than 30 days after the fact-finding hearing.

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

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

10 1. Whether the person nominated as guardian would be a suitable guardian of  
11 the child.

12 2. The willingness and ability of the person nominated as guardian to serve as  
13 the guardian of the child.

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

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

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

**BILL**

(1) (2) (3)

(2)

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

4 (b) *Duties and authority of guardian*. A guardian appointed under sub. (3) shall  
5 have all of the duties and authority specified in s. 48.023.

The child's mother  
obtains

6 B (4) (5) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship*. A guardianship  
7 under this section shall continue until ~~all custodial parents of the child attain~~  
8 of 18 years or until terminated by the court, whichever occurs earlier. The court shall  
9 terminate a guardianship under this section if any of the following occur:

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

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

14 (b) *Removal for cause*. 1. The petitioner under sub. (3)(a) may request that  
15 a guardian appointed under sub. (3)(h) 2. be removed for cause or the court may, on  
16 its own motion, propose such a removal. The request or court proposal shall allege  
17 facts sufficient to show that the guardian is or has been neglecting, is or has been  
18 refusing, or is or has been unable to discharge the guardian's trust and may allege  
19 facts relating to any other information that affects the advisability of the court's  
20 disposition.

21 2. The court shall hold a hearing on the matter unless written waivers of  
22 objections to the removal are signed by all parties entitled to receive notice under  
23 sub. (3)(c) 1. and the court approves the waivers.

24 3. If a hearing is to be held, the court shall notify the persons entitled to receive  
25 notice under sub. (3)(c) 1. at least 7 days before the hearing of the date, place, and

## BILL

1 purpose of the hearing. A copy of the request or court proposal shall be attached to  
2 the notice. The court shall remove the guardian for cause if, at the hearing, the court  
3 finds that it has been proved by clear and convincing evidence that the guardian is  
4 or has been neglecting, is or has been refusing, or is or has been unable to discharge  
5 the guardian's trust and if the court determines that removal of the guardian would  
6 be in the best interests of the child.

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

14 <sup>(5)</sup>(6) RELATIONSHIP TO CH. 54. (a) Except when a different right, remedy, or  
15 procedure is provided under this section, the rights, remedies, and procedures  
16 provided in ch. 54 shall govern a guardianship created under this section.

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

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

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

22 757.69 (1m) (e) Conduct hearings, make findings, or issue orders in  
23 proceedings under s. 48.977 ~~or~~, 48.978, or 48.979.

24 SECTION 10. 808.075 (4) (a) <sup>13.</sup> of the statutes is created to read:



**BILL**

1  
2  
3  
4

808.075 (4) (a) 13. Termination of a guardianship order under s. 48.979 (5),  
including removal of a guardian under s. 48.979 (5) (b) or rescission of a guardianship  
order under s. 48.979 (5) (c).

(END)

**Basford, Sarah**

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**From:** Hoey, Joseph  
**Sent:** Friday, March 07, 2008 1:53 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-0167/2 Topic: Guardianship and parenting classes for child parents

Please Jacket LRB 07-0167/2 for the ASSEMBLY.