



2007 DRAFTING REQUEST

Bill

Received: 09/19/2006

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: Administration-Budget 6-2288

By/Representing: Rhodes

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Children - out-of-home placement

Extra Copies:

Submit via email: NO

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Pre Topic:

DOA:.....Rhodes, BB0004 -

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Topic:

County responsibility for care and placement of child

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Instructions:

See Attached

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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 09/20/2006	jdyer 09/21/2006		_____			S&L
/1			pgreensl 09/25/2006	_____	lparisi 09/25/2006		S&L
/2	gmalaise 11/10/2006	jdyer 11/29/2006	nmatzke 11/29/2006	_____	mbarman 11/29/2006		S&L
/3	gmalaise 12/14/2006	jdyer 12/20/2006	pgreensl 12/21/2006	_____	cduerst 12/21/2006		S&L
/4	gmalaise 01/10/2007	jdyer 01/11/2007	nmatzke 01/11/2007	_____	sbasford 01/11/2007		S&L

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/5	gmalaise 01/26/2007	csicilia 01/26/2007	pgreensl 01/26/2007	_____	cduerst 01/28/2007		S&L
/6	gmalaise 01/31/2007	jdye 01/31/2007	rschlue 01/31/2007	_____	cduerst 01/31/2007		

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/1		<i>16/31/06</i> jd	pgreensl 09/25/2006	_____	lparisi 09/25/2006		S&L
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nwn 1/11  
mwn/jf 1/11

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/2	gmalaise 11/10/2006	jdyer 11/29/2006	nmatzke 11/29/2006	<i>10/20</i> _____ _____	mbarman 11/29/2006		

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*12/20 PG*

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Extra Copies: ~~DHS~~

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/1		1/2 11/29 jld	pgreensl 09/25/2006	_____	lparisi 09/25/2006		
			nwn 11/29	nwn/D 11/29			

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Subject: Children - out-of-home placement

Extra Copies: ~~DHFS - Nicole Guth~~  
~~Andy Forsythe~~

Submit via email: NO ~~nmote.guth@dhes~~ ~~forsythe@dhes.state.wi.us~~

**Pre Topic:**

do not submit copy to  
DHFS

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**2007-09 Budget Bill Statutory Language Drafting Request**

- Topic: Title IV-E Clarifying County Responsibilities
- Tracking Code: BB0004
- SBO team: Health and Insurance
- SBO analyst: Dennis Rhodes
  - Phone: 6-2288
  - Email: dennis.rhodes@wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435
- Priority: Medium

## Title IV-E Clarifying County Responsibilities

### Current Language

Current State law contains the following procedural rules for children in the child welfare system:

1. Court-ordered responsibility for placement and care: No explicit provision exists.
2. Reasonable efforts five day good cause extension: Requires the court to make a reasonable efforts finding at a temporary physical custody hearing within 72 hours of a child's removal from the home. s. 48.21, s. 938.21
3. When issuing termination of parental rights (TPR) orders under Chapters 48 and 938, the court is not required to find that reasonable efforts have been or are being made to achieve the goal of the permanency plan in TPR hearings.
4. When ordering protective placements for children under Chapter 55 (Protective Services System), the court is not required to make contrary to the welfare of the child and reasonable efforts findings.
5. When issuing orders under Chapter 767 (Actions Affecting the Family), the court is not required to make contrary to the welfare of the child and reasonable efforts findings.

### Proposed Change

1. Court-ordered responsibility for placement and care: Add language to Chapters 48 and 938 to clarify that county agencies have the authority and responsibility for the care and placement of children in out-of-home care.
2. Reasonable efforts five day good cause extension: Amend s.48.21 and s.938.21 to allow the court a five day extension of the temporary custody hearing due to insufficient evidence regarding reasonable efforts.
3. Termination of parental rights orders include reasonable efforts finding: Amend Chapters 48 and 938 to require the court to find that reasonable efforts have been made to achieve the goal of the permanency plan in TPR orders.
4. Amend Chapter 55 (Protective Services System) to require protective placement court orders for children to include contrary to welfare and reasonable efforts findings.

5. Amend Chapter 767 (Actions Affecting the Family) language to require child placement court orders to include contrary to welfare and reasonable efforts findings.

## Background and Rationale for Change

Title IV-E of the Social Security Act provides funding to states for foster care maintenance and administrative expenses. Federal law requires that the state meet certain requirements in order to claim federal IV-E funding for child welfare costs. These requirements include timely court determinations, statutory language clarifying court-ordered responsibility for placement and care, and statutory protections for all similarly situated children. Current Wisconsin law does not address these requirements.

These proposals will assure that state law clearly conforms to federal Title IV-E requirements so that the state can maximize federal Title IV-E claiming. The changes under Chapter 938, Chapter 55 and Chapter 767 will give the identified children the same protections afforded to children under Chapter 48, such as permanency planning and determinations by the court that the agency has made reasonable efforts to return the child to the home and that it is contrary to the welfare of the child to return to the home.

A Title IV-E eligible case generates an average of \$9,000 in federal IV-E revenue annually for administrative and maintenance cost claiming. An analysis of cases with initial court orders in 2002, 2003, and 2004 indicated that the Department was losing the opportunity to claim IV-E funds because judicial determinations are not being made or have not been made on a timely basis. If the determinations are not entered on time, the state may lose eligibility for both administrative and maintenance costs for that case. In 2004, 32 cases were allowed only administrative claiming, and 62 cases were not allowed any claiming because the required judicial determinations were not entered on time. These totals may include cases that entered the child welfare system under orders from Chapter 55 or Chapter 767.

Justification for each proposed change is as follows:

1. Court ordered responsibility for care and placement: In the 2005 federal IV-E audit, the federal reviewers initially determined that Wisconsin statutes did not clearly provide the responsibility for the placement and care of children placed in out-of-home care under a court order to county agencies as required under federal IV-E guidelines. Therefore, the reviewers recommended that the state not pass the audit. The Wisconsin Attorney General submitted an informal opinion explaining that current state law did impose this responsibility. While accepting this opinion at the time, federal officials pressed the Department to agree to seek a change to statutory language clarifying that county agencies have this authority and responsibility when the court places a child in out-of-home care. The federal government will be less flexible in its next audit and impose fiscal penalties on the state if this change is not made. The state would likely fail the next IV-E review in 2008 and be required to prepare a new program improvement plan.
2. Reasonable efforts five day good cause extension: Under current state law, the court is required to make a reasonable efforts finding at a temporary physical custody hearing within 72 hours of a child's removal from the home. Occasionally, sufficient evidence is not available at the

hearing to make such a finding because the child protective services investigation is ongoing and has not resulted in a firm conclusion regarding the option to pursue. Federal law requires this determination to be made at the first hearing authorizing the removal of the child from his or her home in order for the case to be eligible for IV-E claiming. Extending the initial temporary physical hearing by five days will provide the child welfare agency with more time to provide information so the court can make the reasonable efforts finding, thereby preserving the state's ability to claim the federal IV-E funding.

3. Termination of parental rights (TPR) orders include reasonable efforts finding: In order to claim federal IV-E funding for cases, the court must annually find that reasonable efforts have been made to achieve the goal of the permanency plan. For most TPR cases, the permanence goal is adoption. As such, agencies must continue to provide reasonable efforts to finalize an adoption post-TPR. The TPR proceeding, however, can cause cases to be off schedule for the annual reasonable efforts finding. This change will ensure that findings are made as part of the TPR order.
4. & 5. Include contrary to the welfare of the child and reasonable efforts findings in Chapters 55 and 767 orders: The court orders for these cases must include these findings in order for the cases to be determined IV-E eligible. Including the requirement for findings in Chapters 55 and 767 will ensure that children can be IV-E eligible if placed in out-of-home care under these chapters.

**Desired Effective Date:** Upon passage  
**Agency:** DHFS  
**Agency Contact:** Nicole Groth  
**Phone:** 266-9364



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-02617

GMM:.....

JLD

DOA:.....Rhodes, BB0004 - County responsibility for care and placement of child

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget. ✓

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES ✓**

**CHILDREN ✓**

Under current law, a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) is required to include in a dispositional order placing a child outside the home, an extension of a dispositional order continuing the placement of a child outside the home, and a consent decree maintaining a child in a placement outside the home findings that continued placement of the child in the home would be contrary to the welfare of the child, that reasonable efforts have been made to prevent the removal of the child from the home, and that reasonable efforts have been made to achieve the goal of the child's permanency plan, which is a plan designed to ensure that the child is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing long-term stability. This bill requires the juvenile court to make the finding that reasonable efforts have been made to achieve the goal of the child's permanency plan in a termination of parental rights (TPR) order if a permanency plan has previously been filed with respect to the child.

Under current law, the juvenile court may order a protective placement for a minor 14 years of age or over who has a developmental disability that is likely to be



permanent, who has a primary need for residential care and custody, and who is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or to others. Currently, protective placements may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled, foster care services, or other home placements, or to other appropriate facilities. This bill requires a juvenile court to include in an order that protectively places a minor in a foster home, treatment foster home, group home, or residential care center for children and youth a finding that placement of the minor in his or her home would be contrary to the welfare of the minor and, subject to certain exceptions, a finding that reasonable efforts have been made to prevent the removal of the minor from the home.

Under current law, in an action affecting the family, for example, a divorce proceeding, if the circuit court finds that neither parent is able to care for the child adequately or is fit and proper to have care and custody of the child, the circuit court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, to the county department, or to a licensed child welfare agency. This bill requires a circuit court to include in an order transferring legal custody of a child found to be in need of protection or services in an action affecting the family a finding that placement of the child in his or her home would be contrary to the welfare of the child and, subject to certain exceptions, a finding that reasonable efforts have been made to prevent the removal of the child from the home.

The bill also requires a juvenile court, when ordering a child to be placed outside the home, to include in the order an order requiring the county department of human services (county department), ~~the Department of Health and Family Services (DHFS)~~ in Milwaukee County, or the agency primarily responsible for providing services to the child to be responsible for the care and placement of the child.

Under current law, if a child who has been taken into custody under the Children's Code or the Juvenile Justice Code is not released, the juvenile court is required to hold a hearing to determine whether the child should continue to be held in custody and is required to include in an order to hold a child in temporary physical custody certain findings, including a finding that reasonable efforts have been made to prevent the removal of the child from the home. Currently, if for good cause shown sufficient information is not available for the juvenile court to make that finding, the county department, DHFS in Milwaukee County, or the agency primarily responsible for providing services to the child is required to file with the juvenile court sufficient information for the juvenile court to make that finding within five days after the date of the temporary physical custody order.

This bill requires a rehearing to be held on the issue of whether reasonable efforts were made to prevent the removal of the child from the home when at the time of the initial temporary physical custody hearing sufficient information is not available for the juvenile court to make a finding as to that issue. The juvenile court is required to hold that rehearing within five days, excluding Saturdays, Sundays, and legal holidays, after the date on which the temporary physical custody order is

granted and, after the rehearing, the juvenile court is required to enter an order that includes a finding as to that issue.

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

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

**SECTION 1.** 48.21 (5) (b) 1. of the statutes is renumbered 48.21 (5) (b) 1. a. and amended to read:

48.21 (5) (b) 1. a. A finding that continued placement of the child in his or her home would be contrary to the welfare of the child. ~~Unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, the order shall in addition include a~~

b. A finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and ~~a~~ unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

c. A finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to make it possible for the child to return safely home ~~or, if,~~

1m. If for good cause shown sufficient information is not available for the judge or circuit court commissioner to make a finding as to whether these reasonable efforts were made to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, a finding as to whether these reasonable efforts were made to make it possible for the child to return safely home and an order for the county department, department, in a county having

~~a population of 500,000 or more, or agency primarily responsible for providing services to the child under the custody order to file with the court sufficient information for the judge or circuit court commissioner to make a finding as to setting a date for a rehearing on the issue of whether those reasonable efforts were made to prevent the removal of the child from the home ~~by no later than~~. The rehearing shall be held within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of on which the order is granted. After the rehearing, the judge or circuit court commissioner shall enter an order that includes a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home.~~

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109; 2005 a. 232.

**SECTION 2.** 48.21 (5) (b) 1. d. of the statutes is created to read:

48.21 (5) (b) 1. d. An order requiring the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under the custody order to be responsible for the care and placement of the child.

**SECTION 3.** 48.21 (5) (c) of the statutes is amended to read:

48.21 (5) (c) The judge or circuit court commissioner shall make the findings specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109; 2005 a. 232.

**SECTION 4.** 48.315 (2m) (a) 1. of the statutes is amended to read:

48.315 (2m) (a) 1. The court making an initial finding under s. 48.21 (5) (b) 1. or 1m. 48.355 (2) (b) 6., or 48.357 (2v) (a) 1. that reasonable efforts have been made to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or an initial finding under s. 48.21 (5) (b) 3., 48.355 (2) (b) 6r., or 48.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, more than 60 days after the date on which the child was removed from the home.

History: 1977 c. 354; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98; 1997 a. 292; 2001 a. 16, 109.

**SECTION 5.** 48.32 (1) (b) 1. of the statutes is renumbered 48.32 (1) (b) 1. (intro.) and amended to read:

48.32 (1) (b) 1. (intro.) If at the time the consent decree is entered into the child is placed outside the home under a voluntary agreement under s. 48.63 or is otherwise living outside the home without a court order and if the consent decree maintains the child in that placement or other living arrangement, the consent decree shall include <sup>strike</sup> ~~all~~ of the following:

a. A finding that placement of the child in his or her home would be contrary to the welfare of the child, ~~a.~~

b. A finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, ~~and a.~~

c. A finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless

return of the child to the home is the goal of the permanency plan and the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies. ✓

History: 1977 c. 354; 1985 a. 311; 1987 a. 27, 285, 339; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 448; 1997 a. 292; 1999 a. 149; 2001 a. 61, 109.

**SECTION 6.** 48.32 (1) (b) 1. d. of the statutes is created to read:

48.32 (1) (b) 1. d. An order requiring the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child to be responsible for the care and placement of the child. ✓

**SECTION 7.** 48.355 (2) (b) 6. of the statutes is amended to read: ✕

48.355 (2) (b) 6. If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies, and an order requiring the county department, department, or agency to be responsible for the care and placement of the child. ✓ The court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on

which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

**History:** 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 302; 1999 a. 9, 103, 149, 186; 2001 a. 2, 16, 109; 2005 a. 277.

**SECTION 8.** 48.357 (2v) (a) 1. of the statutes is amended to read:

48.357 (2v) (a) 1. If the change in placement order changes the child's placement from a placement in the child's home to a placement outside the child's home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, and an order requiring the agency to be responsible for the care and placement of the child.

**History:** 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292; 1999 a. 9, 103, 149; 2001 a. 16, 103, 109; 2005 a. 253.

**SECTION 9.** 48.425 (1) (c) of the statutes is amended to read:

48.425 (1) (c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report should shall also include a statement of the reasons why the child cannot be returned safely to the family; and

the steps the person or agency has taken to effect this return. If a permanency plan has previously been prepared for the child, the report shall also include specific information showing that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child's permanency plan. ✓

History: 1979 c. 330; 1981 c. 81 s. 33; 1983 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275; 1997 a. 237; 2005 a. 25, 232.

**SECTION 10.** 48.43 (1) (a) of the statutes is amended to read:

48.43 (1) (a) The identity of any agency or individual that has received guardianship of the child or will receive guardianship or custody of the child upon termination, an order requiring that agency to be responsible for the care and placement of the child, and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

History: 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237; 2005 a. 232, 293, 296.

**SECTION 11.** 48.43 (1) (cm) of the statutes is created to read:

48.43 (1) (cm) If a permanency plan has previously been prepared for the child, a finding as to whether the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child's permanency plan. The court shall make the findings specified in this paragraph on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the order. An order that merely references this paragraph without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this paragraph is not sufficient to comply with this paragraph. ✓

**SECTION 12.** 55.055 (5) of the statutes is amended to read:

55.055 (5) If a ward lives with his or her guardian, the guardian may make temporary protective placement of the ward, to provide the guardian with a vacation or to release the guardian temporarily for a family emergency. The temporary protective placement may be made for not more than 30 days but the court may, upon application, grant an additional period not to exceed 60 days in all. The application shall include any information that the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive temporary protective placement that is consistent with the needs of the ward. If the court provides for the temporary placement of a minor who is alleged to be developmentally disabled in a foster home, treatment foster home, group home, or residential care center for children and youth, the order providing for that placement shall include the findings specified in s. 55.12 (7m).

History: 2005 a. 264 ss. 101, 103 to 112, 150; 2005 a. 387; s. 13.93 (2) (c).

**SECTION 13.** 55.075 (2) (c) of the statutes is created to read:

55.075 (2) (c) If the petitioner intends to recommend placement of a minor who is alleged to be developmentally disabled in a foster home, treatment foster home, group home, or residential care center for children and youth, the petition shall contain specific information showing that placement of the minor in his or her home would be contrary to the welfare of the minor and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. apply <sup>applies</sup> specific information showing that the petitioner has made reasonable efforts to prevent the removal of the minor from the home, while assuring that the health and safety of the minor are the paramount concerns.

**SECTION 14.** 55.11 (1) (c) of the statutes is amended to read:



55.11 (1) (c) A medical, psychological, social, vocational, and educational evaluation and review, if necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 54.25 (2). The evaluation and review shall include recommendations for the individual's placement that are consistent with the requirements of s. 55.12 (3), (4), and (5). If placement of a minor who is alleged to be developmentally disabled in a foster home, treatment foster home, group home, or residential care center for children and youth is recommended, the evaluation and review shall also include specific information showing that placement of the minor in his or her home would be contrary to the welfare of the minor and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. apply, specific information showing that the petitioner has made reasonable efforts to prevent the removal of the minor from the home, while assuring that the health and safety of the minor are the paramount concerns.

NOTE: NOTE: Par. (c) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:

History: 2005 a. 264 ss. 131 to 134, 161; 2005 a. 387 s. 117; s. 13.93 (2) (c).

**SECTION 15.** 55.12 (7m) of the statutes is created to read:

55.12 (7m) If the court orders a minor who is developmentally disabled to be placed in a foster home, treatment foster home, group home, or residential care center for children and youth, the order shall include a finding that placement of the minor in his or her home would be contrary to the welfare of the minor, a finding that the petitioner has made reasonable efforts to prevent the removal of the minor from the home, while assuring that the health and safety of the minor are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. apply, and an order requiring the county department or agency ordered to provide protective placement to be responsible for the care and placement of the minor. The court shall make the findings specified in this subsection on a case-by-case basis

based on circumstances specific to the minor and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subsection<sup>✓</sup> without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this paragraph is not sufficient to comply with this subsection<sup>✓</sup>.

sub-section

**SECTION 16.** <sup>x</sup> 55.135 (5m) of the statutes is created to read:

55.135 (5m) If the court orders temporary placement of a minor who is alleged to be developmentally disabled in a foster home, treatment foster home, group home, or residential care center for children and youth, the order shall include the findings and order specified in s. 55.12 (7m) <sup>✓</sup> o

**SECTION 17.** <sup>x</sup> 767.41 (3) (am) of the statutes is created to read:

767.41 (3) (am) If the court transfers legal custody of a child under this subsection<sup>✓</sup>, the order transferring custody shall include a finding that placement of the child in his or her home would be contrary to the welfare of the child, a finding that reasonable efforts have been made to prevent the removal of the child from the home, while assuring that the health and safety of the child are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. apply, and, if the legal custodian appointed under par. <sup>✓</sup> (a) is an agency, an order requiring the agency to be responsible for the care and placement of the child. The court shall make the findings specified in this paragraph<sup>✓</sup> on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this paragraph without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects

apply

an earlier court order that does not comply with this paragraph is not sufficient to comply with this paragraph.

**SECTION 18.** 767.451 (7) of the statutes is amended to read:

767.451 (7) TRANSFER TO DEPARTMENT. The court may order custody transferred to the department of health and family services only if that department agrees to accept custody. If the court orders custody transferred to the department of health and family services, the order transferring custody shall include the findings specified in s. 767.41 (3) (am).

History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9; 2003 a. 130; 2005 a. 101; 2005 a. 443 ss. 160 to 162; Stats. 2005 s. 767.451; 2005 a. 471 ss. 6 to 8; s. 13.93 (1) (b) and (2) (c).

**SECTION 19.** 938.21 (5) (b) 1. of the statutes is renumbered 938.21 (5) (b) 1. a. and amended to read:

938.21 (5) (b) 1. a. A finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile. ~~Unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, the order shall in addition include a~~

b. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, and ~~a~~ unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

c. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to make it possible for the juvenile to return safely home.

1m. If for good cause shown sufficient information is not available for the court to make a finding as to whether these reasonable efforts were made to prevent the

removal of the juvenile from the home, ~~the order shall include while assuring that the juvenile's health and safety are the paramount concerns,~~ a finding as to whether these reasonable efforts were made to make it possible for the juvenile to return safely home and an order for the county department or agency primarily responsible for providing services to the juvenile under the custody order to file with the court sufficient information for the court to make a finding as to setting a date for a rehearing on the issue of whether those reasonable efforts were made to prevent the removal of the juvenile from the home by no later than. The rehearing shall be held within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of on which the order is granted. After the rehearing, the court shall enter an order that includes a finding as to whether those reasonable efforts were made to prevent the removal of the juvenile from the home.

History: 1995 a. 77, 275; 1997 a. 35, 237, 296; 2001 a. 16, 61, 109; 2005 a. 344.

**SECTION 20.** 938.21 (5) (b) 1. d. of the statutes is created to read:

938.21 (5) (b) 1. d. An order requiring the county department or the agency primarily responsible for providing services to the juvenile under the custody order to be responsible for the care and placement of the juvenile.

**SECTION 21.** 938.21 (5) (c) of the statutes is amended to read:

938.21 (5) (c) The court shall make the findings specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order

or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

History: 1995 a. 77, 275; 1997 a. 35, 237, 296; 2001 a. 16, 61, 109; 2005 a. 344.

**SECTION 22.** 938.315 (2m) (a) of the statutes is amended to read:

938.315 (2m) (a) The court making an initial finding under s. 938.21 (5) (b) 1. or 1m., 938.355 (2) (b) 6., or 938.357 (2v) (a) 1. that reasonable efforts have been made to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, or an initial finding under s. 938.21 (5) (b) 3., 938.355 (2) (b) 6r., or 938.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies, more than 60 days after the date on which the juvenile was removed from the home.

History: 1995 a. 77, 352; 1997 a. 181; 2001 a. 16, 109; 2003 a. 284; 2005 a. 344.

**SECTION 23.** 938.32 (1) (c) 1. d. of the statutes is created to read:

938.32 (1) (c) 1. d. An order requiring the county department or the agency primarily responsible for providing services to the juvenile to be responsible for the care and placement of the juvenile.

**SECTION 24.** 938.355 (2) (b) 6. of the statutes is amended to read:

938.355 (2) (b) 6. If the juvenile is placed outside the home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile or, if the juvenile has been adjudicated delinquent and is placed outside the home under s. 938.34 (3) (a), (c), (cm), or (d) or (4d), a finding that the juvenile's current residence will not safeguard the welfare of the juvenile or the community due to the serious nature of the act for which the juvenile was adjudicated delinquent. The court order shall also contain a finding as to whether the county department or the agency primarily responsible for providing services under a court

order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies, and a finding as to whether the county department or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, unless return of the juvenile to the home is the goal of the permanency plan and the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies, and an order requiring the county department or agency to be responsible for the care and placement of the juvenile. The court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344.

**SECTION 25.** 938.355 (6) (cm) of the statutes is amended to read:

938.355 (6) (cm) *Reasonable efforts finding.* The court may not order the sanction of placement in a place of nonsecure custody specified in par. (d) 1. unless the court finds that the agency primarily responsible for providing services for the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home and that continued placement of the juvenile in his or her home is contrary to the welfare of the juvenile and orders the agency to be responsible for the care and placement of the juvenile. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The court

shall make the findings under this paragraph on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the sanction order. A sanction order that merely references this paragraph without documenting or referencing that specific information in the sanction order or an amended sanction order that retroactively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344.

**SECTION 26.** 938.355 (6m) (cm) of the statutes is amended to read:

938.355 (6m) (cm) *Reasonable efforts finding.* The court may not order the sanction of placement in a place of nonsecure custody under par. (a) 1g. unless the court finds that the agency primarily responsible for providing services for the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home and that continued placement of the juvenile in his or her home is contrary to the welfare of the juvenile and orders the agency to be responsible for the care and placement of the juvenile. The court shall make the findings under this paragraph on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the sanction order. A sanction order that merely references this paragraph without documenting or referencing that specific information in the sanction order or an amended sanction order that retroactively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344.

**SECTION 27.** 938.357 (2v) (a) 1. of the statutes is amended to read:

938.357 (2v) (a) 1. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless a circumstance under s. 938.355 (2d) (b) 1. to 4. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies, and an order requiring the agency to be responsible for the care and placement of the juvenile.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 108; 2001 a. 16, 103, 109; 2005 a. 344.

**SECTION 9321. Initial applicability; Health and Family Services.**

(1) OUT-OF-HOME PLACEMENTS OF CHILDREN.

(a) *Juvenile court reports.* The treatment of section 48.425 (1) (c) of the statutes first applies to reports filed with the court assigned to exercise jurisdiction under chapters 48 and 938 of the statutes on the effective date of this paragraph.

(b) *Orders placing child outside home.* The treatment of sections 48.21 (5) (c), 48.355 (2) (b) 6., 48.357 (2v) (a) 1., 48.43 (1) (a) and (cm), 767.41 (3) (am), 7667.415 (7), 938.21 (5) (c), 938.21 (5) (b) 1. d., 938.355 (2) (b) 6., (6) (cm), and (6m) (cm), and 938.357 (2v) (a) 1. of the statutes, the renumbering and amendment of sections 48.21 (5) (b) 1., 48.32 (1) (b) 1., and 938.21 (5) (b) 1. and the creation of sections 48.21 (5) (b) 1. d. and 48.32 (1) (b) 1. d. first apply to court orders granted on the effective date of this paragraph. and 938.21 (5) (b) 1. d. of the statutes

(c) *Protective placements of minors.*



1. 'Petitions.' The treatment of sections 55.075 (2) (c), 55.11 (1) (c), and 55.12 (7m) of the statutes first applies to petitions requesting the protective placement of a minor filed on the effective date of this subdivision.

2. 'Emergency protective placements.' The treatment of section 55.135 (5m) of the statutes first applies to minors taken into custody under section 55.135 (1) (a) of the statutes on the effective date of this subdivision.

3. 'Temporary protective placements.' The treatment of section 55.055 (5) of the statutes first applies to applications for temporary protective placement of a minor filed on the effective date of this subdivision.

(END)

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DIN #: ~

Draft #: 261/6

**1. CHILDREN'S CODE AND JUVENILE JUSTICE CODE -- COURT PROCEDURES**

**Governor:** Modify court procedures under the Children's Code (Chapter 48) and the Juvenile Justice Code (Chapter 938) as follows.

*Court Reports and Orders in TPR Cases.* In cases where an agency files a petition for the termination of parental rights (TPR), or if a court orders an agency to produce a report in a fact-finding hearing, require the agency to include in its report specific information showing that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child's permanency plan, if a permanency plan had previously been prepared for the child.

Require a court order, in a TPR cases in which a permanency plan had previously been prepared for the child, to include a finding as to whether the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child's permanency plan. Require the court to make the findings on a case-by-case basis, based on circumstances specific to the child and to document or reference the specific information on which those findings are based in the order. Specify that an order that merely references this requirement without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this requirement is not sufficient to comply with the requirement.

*Transfer of the Custody of Children in Actions Affecting Families.* Permit a circuit court to transfer the legal custody of a child found to be in need of protection or services in an action affecting the family in Milwaukee County to DHFS. Currently, the court may transfer legal custody of the child to a relative, to the county department of human services or social services, or to a licensed child welfare agency.

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In addition, in all cases where the circuit court transfers legal custody of a child to DHFS, a county department or licensed child welfare agency, require the circuit court to refer the matter to the juvenile court intake worker to conduct an intake inquiry to determine whether a petition alleging the child to be in need of protection or services should be filed with the juvenile court. Require the court to include in an order for transferring legal custody a finding that placement of the child in his or her home would be contrary to the welfare of the child and, subject to certain exceptions, a finding that reasonable efforts have been made to prevent the removal of the child from home. Specify that these provisions would first apply to court orders granted on the bill's general effective date.

*Juvenile Court Orders.* Require a juvenile court, when it orders a child to be placed outside

the home under the supervision of DHFS or a county department, to order the child into the placement and care responsibility of the county or DHFS and to assign the county department or DHFS primary responsibility for providing services to the child. Require DHFS, the Department of Corrections, or a county department, when placing a child outside the home under a voluntary agreement, to state in the voluntary agreement that the agency has placement and care responsibilities for the child and has primary responsibility for providing services to the child. Specify that these changes first apply to voluntary agreement placing a child outside the home entered into on the bill's general effective date.

*Juvenile Court Reports.* Require agencies that file information to assist a juvenile court in making a finding as to whether the child should continue to be held in custody, to file the information with the juvenile court within five days, excluding Saturdays, Sundays and <sup>Added</sup> Holidays, after the date on which a temporary physical custody order is granted. Currently, agencies are required to file the information within five days after the date of the court order. Specify that this change would first apply to reports filed with the court assigned to exercise jurisdiction on the bill's general effective date. ~~(1), (3), (9321)(3)(a)~~

[Bill Sections: 1234 thru 1238, 1242 thru 1244, 1247 thru 1253, 1262 thru 1266, 1330, 1362, 3726, 3728, 3729, 3786 thru 3788, 3793, 3797, 3798, 3807, 3808, 3810, 3812, 3814 thru 3817, 3825, and 9321(3)]



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0261/6  
GMM:jld&cs:rs

DOA:.....Rhodes, BB0004 - County responsibility for care and placement of child

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**CHILDREN**

Under current law, a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) is required to include in a dispositional order placing a child outside the home, an extension of a dispositional order continuing the placement of a child outside the home, and a consent decree maintaining a child in a placement outside the home findings that continued placement of the child in the home would be contrary to the welfare of the child, that reasonable efforts have been made to prevent the removal of the child from the home, and that reasonable efforts have been made to achieve the goal of the child's permanency plan, which is a plan designed to ensure that the child is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing long-term stability. This bill requires the juvenile court to make the finding that reasonable efforts have been made to achieve the goal of the child's permanency plan in a termination of parental rights (TPR) order if a permanency plan has previously been filed with respect to the child.

Under current law, in an action affecting the family, for example, a divorce proceeding, if the circuit court finds that neither parent is able to care for the child

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(18)

adequately or is fit and proper to have care and custody of the child, the circuit court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, to the county department of human services or social services (county department), or to a licensed child welfare agency. This bill also permits a circuit court to transfer legal custody of a child found to be in need of protection or services in an action affecting the family in Milwaukee County to DHFS. In addition, if the circuit court transfers legal custody of a child found to be in need of protection or services in an action affecting the family to a county department, DHFS, or a licensed child welfare agency, the bill requires the circuit court to refer the matter to the juvenile court intake worker, who is required to conduct an intake inquiry to determine whether a petition alleging the child to be in need of protection or services should be filed with the juvenile court. Further, the bill requires a circuit court to include in an order transferring legal custody of a child found to be in need of protection or services in an action affecting the family a finding that placement of the child in his or her home would be contrary to the welfare of the child and, subject to certain exceptions, a finding that reasonable efforts have been made to prevent the removal of the child from the home.

The bill also requires a juvenile court, when ordering a child to be placed outside the home under the supervision of a county department or, in Milwaukee County, DHFS to order the child into the placement and care responsibility of the county department or DHFS and to assign the county department or DHFS primary responsibility for providing services to the child. In addition, the bill requires a county department, DHFS, or DOC, when placing a child outside the home under a voluntary agreement, to specifically state in the voluntary agreement that the county department, DHFS, or DOC has placement and care responsibility for the child and has primary responsibility for providing services to the child.

Under current law, if a child who has been taken into custody under the Children's Code or the Juvenile Justice Code is not released, the juvenile court is required to hold a hearing to determine whether the child should continue to be held in custody and is required to include in an order to hold a child in temporary physical custody certain findings, including a finding that reasonable efforts have been made to prevent the removal of the child from the home. Currently, if for good cause shown sufficient information is not available for the juvenile court to make that finding, the county department, DHFS in Milwaukee County, or the agency primarily responsible for providing services to the child is required to file with the juvenile court sufficient information for the juvenile court to make that finding within five days after the date of the temporary physical custody order. This bill requires that information to be filed with the juvenile court within five days, excluding Saturdays, Sundays, and legal holidays, after the date on which the temporary physical custody order is granted.

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 1234 SECTION 1. 48.21 (5) (b) 1. of the statutes is renumbered 48.21 (5) (b) 1. a. and

2 amended to read: *Hearing for children in custody*

3 48.21 (5) (b) 1. a. A finding that continued placement of the child in his or her  
4 home would be contrary to the welfare of the child. ~~Unless the judge or circuit court~~  
5 ~~commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to~~  
6 5. applies, the order shall in addition include a-

7 b. A finding as to whether the person who took the child into custody and the  
8 intake worker have made reasonable efforts to prevent the removal of the child from  
9 the home, while assuring that the child's health and safety are the paramount  
10 concerns, and a- unless the judge or circuit court commissioner finds that any of the  
11 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

12 c. A finding as to whether the person who took the child into custody and the  
13 intake worker have made reasonable efforts to make it possible for the child to return  
14 safely home ~~or, if,~~

15 1m. If for good cause shown sufficient information is not available for the judge  
16 or circuit court commissioner to make a finding as to whether ~~these~~ reasonable  
17 efforts were made to prevent the removal of the child from the home, while assuring  
18 that the child's health and safety are the paramount concerns, a finding as to  
19 whether ~~these~~ reasonable efforts were made to make it possible for the child to return  
20 safely home and an order for the county department, department, in a county having  
21 a population of 500,000 or more, or agency primarily responsible for providing

*Written  
Orders  
Must  
include*

*clarify  
and  
renumber*

1 services to the child under the custody order to file with the court sufficient  
2 information for the judge or circuit court commissioner to make a finding as to  
3 whether those reasonable efforts were made to prevent the removal of the child from  
4 the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays,  
5 after the date of on which the order is granted.

6 **1235 SECTION 2.** 48.21 (5) (b) 1. d. of the statutes is created to read:

7 48.21 (5) (b) 1. d. If the child is under the supervision of the county department  
8 in a county having a population of 500,000 or more, the department, an order  
9 ordering the child into the placement and care responsibility of the county  
10 department or department as required under 42 USC 672 (a) (2) and assigning the  
11 county department or department primary responsibility for providing services to  
12 the child.

*reference to  
Mil County  
Custody*

*Juvenile Court  
Placement  
Order*

13 **1236 SECTION 3.** 48.21 (5) (c) of the statutes is amended to read:

14 48.21 (5) (c) The judge or circuit court commissioner shall make the findings  
15 specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances  
16 specific to the child and shall document or reference the specific information on  
17 which those findings are based in the custody order. A custody order that merely  
18 references par. (b) 1., 1m., or 3. without documenting or referencing that specific  
19 information in the custody order or an amended custody order that retroactively  
20 corrects an earlier custody order that does not comply with this paragraph is not  
21 sufficient to comply with this paragraph.

*renumbering  
references*

22 **1237 SECTION 4.** 48.235 (4) (b) of the statutes is amended to read:

23 48.235 (4) (b) The court shall order the agency identified under s. 48.355 (2) (b)  
24 1. 48.33 (1) (c) as primarily responsible for the provision of services to notify the  
25 guardian ad litem, if any, regarding actions to be taken under par. (a).

*Court  
disposition  
Order*

1 <sup>1238</sup> **SECTION 5.** 48.235 (4m) (b) of the statutes is amended to read:

2 48.235 (4m) (b) The court shall order the agency identified under s. 48.355 (2)  
3 ~~(b) 1.~~ 48.33 (1) (c) as primarily responsible for the provision of services to notify the  
4 guardian ad litem, if any, regarding actions to be taken under par. (a).

5 <sup>1242</sup> **SECTION 6.** 48.315 (2m) (a) 1. of the statutes is amended to read:

6 48.315 (2m) (a) 1. The court making an initial finding under s. 48.21 (5) (b) 1.  
7 or 1m., 48.355 (2) (b) 6., or 48.357 (2v) (a) 1. that reasonable efforts have been made  
8 to prevent the removal of the child from the home, while assuring that the child's  
9 health and safety are the paramount concerns, or an initial finding under s. 48.21  
10 (5) (b) 3., 48.355 (2) (b) 6r., or 48.357 (2v) (a) 3. that those efforts were not required  
11 to be made because a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, more  
12 than 60 days after the date on which the child was removed from the home.

13 <sup>1243</sup> **SECTION 7.** 48.32 (1) (b) 1. of the statutes is renumbered 48.32 (1) (b) 1. (intro.)  
14 and amended to read:

*Clarification*

15 48.32 (1) (b) 1. (intro.) If at the time the consent decree is entered into the child  
16 is placed outside the home under a voluntary agreement under s. 48.63 or is  
17 otherwise living outside the home without a court order and if the consent decree  
18 maintains the child in that placement or other living arrangement, the consent  
19 decree shall include ~~a-~~ all of the following:

20 a. A finding that placement of the child in his or her home would be contrary  
21 to the welfare of the child, ~~a.~~

22 b. A finding as to whether the county department, the department, in a county  
23 having a population of 500,000 or more, or the agency primarily responsible for  
24 providing services to the child has made reasonable efforts to prevent the removal  
25 of the child from the home, while assuring that the child's health and safety are the

*- cross reference*



1 paramount concerns, unless the judge or circuit court commissioner finds that any  
2 of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, ~~and a.~~

3 c. A finding as to whether the county department, department, or agency has  
4 made reasonable efforts to achieve the goal of the child's permanency plan, unless  
5 return of the child to the home is the goal of the permanency plan and the judge or  
6 circuit court commissioner finds that any of the circumstances specified in s. 48.355  
7 (2d) (b) 1. to 5. applies.

8 **1244** SECTION 8. 48.32 (1) (b) 1. d. of the statutes is created to read:

9 48.32 (1) (b) 1. d. If the child's placement or other living arrangement is under  
10 the supervision of the county department or, in a county having a population of  
11 500,000 or more, the department, an order ordering the child into the placement and  
12 care responsibility of the county department or department as required under 42  
13 USC 672 (a) (2) and assigning the county department or department primary  
14 responsibility for providing services to the child.

*Juvenile  
Court  
Order*

*No change -  
Clarified 1247*

15 SECTION 9. 48.335 (3g) of the statutes is renumbered 48.335 (3g) (intro.) and  
16 amended to read:

17 48.335 (3g) (intro.) At hearings under this section, if the agency, as defined in  
18 s. 48.38 (1) (a), is recommending placement of the child in a foster home, treatment  
19 foster home, group home, or residential care center for children and youth or in the  
20 home of a relative other than a parent, the agency shall present as evidence specific  
21 information showing that all of the following:

22 (a) That continued placement of the child in his or her home would be contrary  
23 to the welfare of the child, ~~specific information showing that.~~

24 (b) That the county department, the department, in a county having a  
25 population of 500,000 or more, or the agency primarily responsible for providing

*(*

1 services to the child has made reasonable efforts to prevent the removal of the child  
2 from the home, while assuring that the child's health and safety are the paramount  
3 concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5.  
4 applies, ~~and specific information showing that,~~

5 (c) That the county department, department, or agency has made reasonable  
6 efforts to achieve the goal of the child's permanency plan, unless return of the child  
7 to the home is the goal of the permanency plan and any of the circumstances specified  
8 in s. 48.355 (2d) (b) 1. to 5. applies.

9 1248 SECTION 10. 48.355 (2) (b) 1. of the statutes is amended to read:

10 48.355 (2) (b) 1. The specific services ~~or continuum of services~~ to be provided  
11 to the child and family, to the child expectant mother and family, or to the adult  
12 expectant mother, ~~the identity of the agencies which are to be primarily responsible~~  
13 ~~for the provision of the services ordered by the judge, the identity of the person or~~  
14 ~~agency who will provide case management or coordination of services, if any, and, if~~  
15 custody of the child is to be transferred to effect the treatment plan, the identity of  
16 the legal custodian.

17 1249 SECTION 11. 48.355 (2) (b) 6g. of the statutes is created to read:

18 48.355 (2) (b) 6g. If the child is placed outside the home under the supervision  
19 of the county department or, in a county having a population of 500,000 or more, the  
20 department, an order ordering the child into the placement and care responsibility  
21 of the county department or department as required under 42 USC 672 (a) (2) and  
22 assigning the county department or department primary responsibility for providing  
23 services to the child.

24 1250 SECTION 12. 48.357 (1) (am) 3. of the statutes is amended to read:

1           48.357 (1) (am) 3. If the court changes the child's placement from a placement  
2 outside the home to another placement outside the home, the change in placement  
3 order shall contain ~~one of the statements~~ the applicable order specified in sub. (2v)  
4 (a) 1m. and the applicable statement specified in sub. (2v) (a) 2.

5 <sup>1251</sup> **SECTION 13.** 48.357 (1) (c) 3. of the statutes is amended to read:

6           48.357 (1) (c) 3. If the court changes the child's placement from a placement in  
7 the child's home to a placement outside the child's home, the change in placement  
8 order shall contain the findings specified in sub. (2v) (a) 1., ~~one of the statements~~ the  
9 applicable order specified in sub. (2v) (a) 1m., the applicable statement specified in  
10 sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances  
11 specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the  
12 determination specified in sub. (2v) (a) 3.

13 <sup>1252</sup> **SECTION 14.** 48.357 (2m) (c) of the statutes is amended to read:

14           48.357 (2m) (c) If the court changes the child's placement from a placement in  
15 the child's home to a placement outside the child's home, the change in placement  
16 order shall contain the findings specified in sub. (2v) (a) 1., ~~one of the statements~~ the  
17 applicable order specified in sub. (2v) (a) 1m., the applicable statement specified in  
18 sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances  
19 specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the  
20 determination specified in sub. (2v) (a) 3. If the court changes the child's placement  
21 from a placement outside the home to another placement outside the home, the  
22 change in placement order shall contain the applicable order specified in sub. (2v)  
23 (a) 1m. and the applicable statement specified in sub. (2v) (a) 2.

24 <sup>1253</sup> **SECTION 15.** 48.357 (2v) (a) 1m. of the statutes is created to read:

1           48.357 (2v) (a) 1m. If the change in placement order changes the placement of  
2 a child who is under the supervision of the county department or, in a county having  
3 a population of 500,000 or more, the department to a placement outside the child's  
4 home, whether from a placement in the home or from another placement outside the  
5 home, an order ordering the child into, or to be continued in, the placement and care  
6 responsibility of the county department or department as required under 42 USC  
7 672 (a) (2) and assigning the county department or department primary  
8 responsibility, or continued primary responsibility, for providing services to the  
9 child.

10           1262 **SECTION 16.** 48.38 (2) (intro.) of the statutes is amended to read:

11           48.38 (2) PERMANENCY PLAN REQUIRED. (intro.) Except as provided in sub. (3),  
12 for each child living in a foster home, treatment foster home, group home, residential  
13 care center for children and youth, juvenile detention facility, or shelter care facility,  
14 the agency that placed the child or arranged the placement or the agency assigned  
15 primary responsibility for providing services to the child under s. 48.355 (2) (b) 6g.  
16 shall prepare a written permanency plan, if any of the following conditions exists,  
17 and, for each child living in the home of a relative other than a parent, that agency  
18 shall prepare a written permanency plan, if any of the conditions specified in pars.  
19 (a) to (e) exists:

20           1263 **SECTION 17.** 48.417 (2) (c) of the statutes is amended to read:

21           48.417 (2) (c) The agency primarily responsible for providing services to the  
22 ~~child and the family~~ under a court order, if required under s. 48.355 (2) (b) 6. to make  
23 reasonable efforts to make it possible for the child to return safely to his or her home,  
24 has not provided to the family of the child, consistent with the time period in the

1 child's permanency plan, the services necessary for the safe return of the child to his  
2 or her home.

3 **1264** SECTION 18. 48.425 (1) (c) of the statutes is amended to read:

4 48.425 (1) (c) If the child has been previously adjudicated to be in need of  
5 protection and services, a statement of the steps the agency or person responsible for  
6 provision of services has taken to remedy the conditions responsible for court  
7 intervention and the parent's response to and cooperation with these services. If the  
8 child has been removed from the home, the report ~~should~~ shall also include a  
9 statement of the reasons why the child cannot be returned safely to the family; and  
10 the steps the person or agency has taken to effect this return. If a permanency plan  
11 has previously been prepared for the child, the report shall also include specific  
12 information showing that the agency primarily responsible for providing services to  
13 the child has made reasonable efforts to achieve the goal of the child's permanency  
14 plan.

Revised  
p.1

15 **1265** SECTION 19. 48.43 (1) (am) of the statutes is created to read:

16 48.43 (1) (am) If the department or a county department receives guardianship  
17 or custody of the child under par. (a), an order ordering the child into the placement  
18 and care responsibility of the department or county department as required under  
19 42 USC 672 (a) (2) and assigning the department or county department primary  
20 responsibility for providing services to the child.

21 **1266** SECTION 20. 48.43 (1) (cm) of the statutes is created to read:

22 48.43 (1) (cm) If a permanency plan has previously been prepared for the child,  
23 a finding as to whether the agency primarily responsible for providing services to the  
24 child has made reasonable efforts to achieve the goal of the child's permanency plan.

25 The court shall make the findings specified in this paragraph on a case-by-case basis

TPR - what's in a TPR order

1 based on circumstances specific to the child and shall document or reference the  
2 specific information on which those findings are based in the order. An order that  
3 merely references this paragraph without documenting or referencing that specific  
4 information in the order or an amended order that retroactively corrects an earlier  
5 order that does not comply with this paragraph is not sufficient to comply with this  
6 paragraph.

7 <sup>1330</sup> SECTION 21. 48.63 (1) of the statutes is amended to read:

8 48.63 (1) Acting under court order or voluntary agreement, the child's parent  
9 or guardian or the department of ~~health and family services~~, the department of  
10 corrections, a county department, or a child welfare agency licensed to place children  
11 in foster homes, treatment foster homes, or group homes may place a child or  
12 negotiate or act as intermediary for the placement of a child in a foster home,  
13 treatment foster home, or group home. Voluntary agreements under this subsection  
14 may not be used for placements in facilities other than foster, treatment foster, or  
15 group homes and may not be extended. A foster home or treatment foster home  
16 placement under a voluntary agreement may not exceed 180 days from the date on  
17 which the child was removed from the home under the voluntary agreement. A group  
18 home placement under a voluntary agreement may not exceed 15 days from the date  
19 on which the child was removed from the home under the voluntary agreement,  
20 except as provided in sub. (5). These time limitations do not apply to placements  
21 made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary agreements may be  
22 made only under this subsection and sub. (5) (b) and shall be in writing and shall  
23 specifically state that the agreement may be terminated at any time by the parent  
24 or guardian or by the child if the child's consent to the agreement is required. The  
25 child's consent to the agreement is required whenever the child is 12 years of age or

*Voluntary  
Agree*

1 older. If a county department, the department, or the department of corrections  
2 places a child or negotiates or acts as intermediary for the placement of a child under  
3 this subsection, the voluntary agreement shall also specifically state that the county  
4 department, department, or department of corrections has placement and care  
5 responsibility for the child as required under 42 USC 672 (a) (2) and has primary  
6 responsibility for providing services to the child.

7 **1362** SECTION 22. 48.75 (1g) (c) 1. of the statutes is amended to read:

8 48.75 (1g) (c) 1. A statement that the public licensing agency issuing the license  
9 is responsible has placement and care responsibility for the child as required under  
10 42 USC 672 (a) (2) and has primary responsibility for providing services to the child  
11 who is placed in the foster home, as specified in the agreement.

12 **3726** SECTION 23. 767.41 (3) (a) of the statutes is amended to read:

13 767.41 (3) (a) If the interest of any child demands it, and if the court finds that  
14 neither parent is able to care for the child adequately or that neither parent is fit and  
15 proper to have the care and custody of the child, the court may declare the child to  
16 be in need of protection or services and transfer legal custody of the child to a relative  
17 of the child, as defined in s. 48.02 (15), to a county department, as defined under s.  
18 48.02 (2g), ~~or~~ to a licensed child welfare agency, or, in a county having a population  
19 of 500,000 or more, the department of health and family services. If the court  
20 transfers legal custody of a child under this subsection, in its order the court shall  
21 notify the parents of any applicable grounds for termination of parental rights under  
22 s. 48.415. If the court transfers legal custody under this section to an agency, the  
23 court shall also refer the matter to the court intake worker, as defined in s. 48.02 (3),  
24 who shall conduct an inquiry under s. 48.24 to determine whether a petition should  
25 be filed under s. 48.13.

1 3728 SECTION 24. 767.41 (3) (am) of the statutes is created to read:

2 767.41 (3) (am) If the court transfers legal custody of a child under this  
3 subsection, the order transferring custody shall include a finding that placement of  
4 the child in his or her home would be contrary to the welfare of the child and a finding  
5 that reasonable efforts have been made to prevent the removal of the child from the  
6 home, while assuring that the health and safety of the child are the paramount  
7 concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5.  
8 applies. If the legal custodian appointed under par. (a) is a county department, the  
9 court shall order the child into the placement and care responsibility of the county  
10 department as required under 42 USC 672 (a) (2) and shall assign the county  
11 department primary responsibility for providing services to the child. The court  
12 shall make the findings specified in this paragraph on a case-by-case basis based  
13 on circumstances specific to the child and shall document or reference the specific  
14 information on which those findings are based in the court order. A court order that  
15 merely references this paragraph without documenting or referencing that specific  
16 information in the court order or an amended court order that retroactively corrects  
17 an earlier court order that does not comply with this paragraph is not sufficient to  
18 comply with this paragraph.

19 3729 SECTION 25. 767.451 (7) of the statutes is amended to read:

20 767.451 (7) TRANSFER TO DEPARTMENT. The court may order custody transferred  
21 to the department of health and family services only if that department agrees to  
22 accept custody. If the court orders custody transferred to the department of health  
23 and family services, the order transferring custody shall include the findings and  
24 order specified in s. 767.41 (3) (am).



1 <sup>3786</sup> SECTION 26. 938.21 (5) (b) 1. of the statutes is renumbered 938.21 (5) (b) 1. a.

2 and amended to read:

3 938.21 (5) (b) 1. a. A finding that continued placement of the juvenile in his or  
4 her home would be contrary to the welfare of the juvenile. ~~Unless the court finds that~~  
5 ~~any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, the order shall~~  
6 ~~in addition include a-~~

7 b. A finding as to whether the person who took the juvenile into custody and  
8 the intake worker have made reasonable efforts to prevent the removal of the  
9 juvenile from the home, while assuring that the juvenile's health and safety are the  
10 paramount concerns, and a- unless the court finds that any of the circumstances  
11 specified in s. 938.355 (2d) (b) 1. to 4. applies.

12 c. A finding as to whether the person who took the juvenile into custody and  
13 the intake worker have made reasonable efforts to make it possible for the juvenile  
14 to return safely home.

15 1m. If for good cause shown sufficient information is not available for the court  
16 to make a finding as to whether those reasonable efforts were made to prevent the  
17 removal of the juvenile from the home, the order shall include while assuring that  
18 the juvenile's health and safety are the paramount concerns, a finding as to whether  
19 those reasonable efforts were made to make it possible for the juvenile to return  
20 safely home and an order for the county department or agency primarily responsible  
21 for providing services to the juvenile under the custody order to file with the court  
22 sufficient information for the court to make a finding as to whether those reasonable  
23 efforts were made to prevent the removal of the juvenile from the home by no later  
24 than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of on  
25 which the order is granted.

1 **3787** SECTION 27. 938.21 (5) (b) 1. d. of the statutes is created to read:

2 938.21 (5) (b) 1. d. If the juvenile is under the supervision of the county  
3 department, an order ordering the juvenile into the placement and care  
4 responsibility of the county department as required under 42 USC 672 (a) (2) and  
5 assigning the county department primary responsibility for providing services to the  
6 juvenile.

7 **3788** SECTION 28. 938.21 (5) (c) of the statutes is amended to read:

8 938.21 (5) (c) The court shall make the findings specified in par. (b) 1., 1m., and  
9 3. on a case-by-case basis based on circumstances specific to the juvenile and shall  
10 document or reference the specific information on which those findings are based in  
11 the custody order. A custody order that merely references par. (b) 1., 1m., or 3.  
12 without documenting or referencing that specific information in the custody order  
13 or an amended custody order that retroactively corrects an earlier custody order that  
14 does not comply with this paragraph is not sufficient to comply with this paragraph.

15 **3793** SECTION 29. 938.235 (4) (b) of the statutes is amended to read:

16 938.235 (4) (b) The court shall order the agency identified under s. ~~938.355 (2)~~  
17 ~~(b) 1.~~ 938.33 (1) (c) as primarily responsible for the provision of services to notify the  
18 guardian ad litem, if any, regarding actions to be taken under par. (a).

19 **3797** SECTION 30. 938.315 (2m) (a) of the statutes is amended to read:

20 938.315 (2m) (a) The court making an initial finding under s. 938.21 (5) (b) 1.  
21 or 1m., 938.355 (2) (b) 6., or 938.357 (2v) (a) 1. that reasonable efforts have been made  
22 to prevent the removal of the juvenile from the home, while assuring that the  
23 juvenile's health and safety are the paramount concerns, or an initial finding under  
24 s. 938.21 (5) (b) 3., 938.355 (2) (b) 6r., or 938.357 (2v) (a) 3. that those efforts were not  
25 required to be made because a circumstance specified in s. 938.355 (2d) (b) 1. to 4.

1 applies, more than 60 days after the date on which the juvenile was removed from  
2 the home.

3 **3798** SECTION 31. 938.32 (1) (c) 1. d. of the statutes is created to read:

4 938.32 (1) (c) 1. d. If the juvenile's placement or other living arrangement is  
5 under the supervision of the county department, an order ordering the juvenile into  
6 the placement and care responsibility of the county department as required under  
7 42 USC 672 (a) (2) and assigning the county department primary responsibility for  
8 providing services to the juvenile.

9 **3807** SECTION 32. 938.355 (2) (b) 1. of the statutes is amended to read:

10 938.355 (2) (b) 1. The specific services ~~or continuum of services~~ to be provided  
11 to the juvenile and the juvenile's family, ~~the identity of the agencies that are~~  
12 ~~primarily responsible for the provision of the services, the identity of the person or~~  
13 ~~agency that will provide case management or coordination of services, if any, and, if~~  
14 custody is to be transferred to effect the treatment plan, the identity of the legal  
15 custodian.

16 **3808** SECTION 33. 938.355 (2) (b) 6g. of the statutes is created to read:

17 938.355 (2) (b) 6g. If the juvenile is placed outside the home under the  
18 supervision of the county department, an order ordering the juvenile into the  
19 placement and care responsibility of the county department as required under 42  
20 USC 672 (a) (2) and assigning the county department primary responsibility for  
21 providing services to the juvenile.

22 **3810** SECTION 34. 938.355 (6) (d) 1. of the statutes is amended to read:

23 938.355 (6) (d) 1. Placement of the juvenile in a secure detention facility or  
24 juvenile portion of a county jail that meets the standards promulgated by the  
25 department by rule or in a place of nonsecure custody, for not more than 10 days and

1 the provision of educational services consistent with his or her current course of  
2 study during the period of placement. The juvenile shall be given credit against the  
3 period of detention or nonsecure custody imposed under this subdivision for all time  
4 spent in secure detention in connection with the course of conduct for which the  
5 detention or nonsecure custody was imposed. If the court orders placement of the  
6 juvenile in a place of nonsecure custody under the supervision of the county  
7 department, the court shall order the juvenile into the placement and care  
8 responsibility of the county department as required under 42 USC 672 (a) (2) and  
9 shall assign the county department primary responsibility for providing services to  
10 the juvenile.

11 **3812** SECTION 35. 938.355 (6m) (a) 1g. of the statutes is amended to read:

12 938.355 (6m) (a) 1g. Placement of the juvenile in a secure detention facility or  
13 juvenile portion of a county jail that meets the standards promulgated by the  
14 department by rule or in a place of nonsecure custody, for not more than 10 days and  
15 the provision of educational services consistent with his or her current course of  
16 study during the period of placement. The juvenile shall be given credit against the  
17 period of detention or nonsecure custody imposed under this subdivision for all time  
18 spent in secure detention in connection with the course of conduct for which the  
19 detention or nonsecure custody was imposed. The use of placement in a secure  
20 detention facility or in a juvenile portion of a county jail as a sanction under this  
21 subdivision is subject to the adoption of a resolution by the county board of  
22 supervisors under s. 938.06 (5) authorizing the use of those placements as a sanction.  
23 If the court orders placement of the juvenile in a place of nonsecure custody under  
24 the supervision of the county department, the court shall order the juvenile into the  
25 placement and care responsibility of the county department as required under 42

1 USC 672 (a) (2) and shall assign the county department primary responsibility for  
2 providing services to the juvenile.

3 3814 **SECTION 36.** 938.357 (1) (am) 3. of the statutes is amended to read:

4 938.357 (1) (am) 3. If the court changes the juvenile's placement from a  
5 placement outside the home to another placement outside the home, the change in  
6 placement order shall contain ~~one of the statements~~ the applicable order under sub.  
7 (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2.

8 3815 **SECTION 37.** 938.357 (1) (c) 3. of the statutes is amended to read:

9 938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement  
10 in the juvenile's home to a placement outside the juvenile's home, the change in  
11 placement order shall contain the findings under sub. (2v) (a) 1., ~~one of the~~  
12 ~~statements~~ the applicable order under sub. (2v) (a) 1m., the applicable statement  
13 under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances  
14 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination  
15 under sub. (2v) (a) 3.

16 3816 **SECTION 38.** 938.357 (2m) (c) of the statutes is amended to read:

17 938.357 (2m) (c) ~~In-home to out-of-home placement; findings~~ Findings  
18 required. If the court changes the juvenile's placement from a placement in the  
19 juvenile's home to a placement outside the juvenile's home, the change in placement  
20 order shall contain the findings under sub. (2v) (a) 1., ~~one of the statements~~ the  
21 applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a)  
22 2., and, if in addition the court finds that any of the circumstances under s. 938.355  
23 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v)  
24 (a) 3. If the court changes the juvenile's placement from a placement outside the  
25 home to another placement outside the home, the change in placement order shall

1 contain the applicable order under sub. (2v) (a) 1m. and the applicable statement  
2 under sub. (2v) (a) 2.

3 3817 **SECTION 39.** 938.357 (2v) (a) 1m. of the statutes is created to read:

4 938.357 (2v) (a) 1m. If the change in placement order changes the placement  
5 of a juvenile who is under the supervision of the county department to a placement  
6 outside the juvenile's home, whether from a placement in the home or from another  
7 placement outside the home, an order ordering the juvenile into, or to be continued  
8 in, the placement and care responsibility of the county department as required under  
9 42 USC 672 (a) (2) and assigning the county department primary responsibility, or  
10 continued primary responsibility, for providing services to the juvenile.

11 3825 **SECTION 40.** 938.38 (2) (intro.) of the statutes is amended to read:

12 938.38 (2) PERMANENCY PLAN REQUIRED. (intro.) Except as provided in sub. (3),  
13 for each juvenile living in a foster home, treatment foster home, group home,  
14 residential care center for children and youth, juvenile detention facility, or shelter  
15 care facility, the agency that placed the juvenile or arranged the placement or the  
16 agency assigned primary responsibility for providing services to the juvenile under  
17 s. 938.355 (2) (b) 6g. shall prepare a written permanency plan, if any of the following  
18 conditions exists, and, for each juvenile living in the home of a relative other than  
19 a parent, that agency shall prepare a written permanency plan, if any of the  
20 conditions under pars. (a) to (e) exists:

21 **SECTION 9321. Initial applicability; Health and Family Services.**

22 (3) (1) OUT-OF-HOME PLACEMENTS OF CHILDREN.

23 (a) *Juvenile court reports.* The treatment of section 48.425 (1) (c) of the statutes  
24 first applies to reports filed with the court assigned to exercise jurisdiction under  
25 chapters 48 and 938 of the statutes on the effective date of this paragraph.

1           (b) *Orders placing child outside home.* The treatment of sections 48.21 (5) (c),  
2           48.235 (4) (b) and (4m) (b), 48.355 (2) (b) 1. and 6g., 48.357 (1) (am) 3. and (c) 3., (2m)  
3           (c), and (2v) (a) 1m., 48.38 (2) (intro.), 48.417 (2) (c), 48.43 (1) (am) and (cm), 767.41  
4           (3) (a) (with respect to transferring legal custody of a child to the department of  
5           health and family services) and (am), 767.451 (7) (with respect to transferring legal  
6           custody of a child to the department of health and family services), 938.21 (5) (c),  
7           938.235 (4) (b), 938.32 (1) (c) 1. d., 938.355 (2) (b) 1. and 6g., (6) (d) 1., and (6m) (a)  
8           1g., 938.357 (1) (am) 3. and (c) 3., (2m) (c), and (2v) (a) 1m., and 938.38 (2) (intro.) of  
9           the statutes, the renumbering and amendment of sections 48.21 (5) (b) 1., 48.32 (1)  
10          (b) 1., and 938.21 (5) (b) 1. of the statutes and the creation of sections 48.21 (5) (b) 1.  
11          d., 48.32 (1) (b) 1. d., and 938.21 (5) (b) 1. d. of the statutes first apply to court orders  
12          granted on the effective date of this paragraph.

          \*\*\*\*NOTE: This is reconciled SECTION 9321 (1) (b). This SECTION has been affected  
by drafts with the following LRB numbers: LRB-0261 and LRB-1261.

13          (c) *Voluntary agreements placing child outside home.* The treatment of sections  
14          48.63 (1) and 48.75 (1g) (c) 1. of the statutes first applies to voluntary agreements  
15          placing a child outside the home entered into on the effective date of this paragraph.

16

(END)

## Malaise, Gordon

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**From:** Connolly, Cathleen  
**Sent:** Monday, November 06, 2006 2:24 PM  
**To:** Malaise, Gordon  
**Cc:** Mitchell, Mark; Timmerman, David; Durkin, Therese; [wicourts.gov]; Michelle.Jensen-Goodwin  
**Subject:** Placement and Care Responsibility

**Attachments:** Placement and Care Drafting leg memo 2 11-6-06.doc



Placement and Care  
Drafting le...

Hi Gordon,

Thank you for your patience. I am attaching a memo outlining what the Dept. would like to be drafted to address the placement and care language that the Administration for Children and Families is seeking.

Please let me know if you have any questions. I will need to consult with others, but I will get back to you as quickly as possible.

Cathleen Connolly  
Legislative and Policy Consultant  
Bureau of Programs and Policies  
Division of Children and Family Services Department of Health and Family Services  
608-261-8306  
connocl@dhfs.state.wi.us



## Malaise, Gordon

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**From:** Rhodes, Dennis - DOA [dennis.rhodes@wisconsin.gov]  
**Sent:** Tuesday, November 07, 2006 1:52 PM  
**To:** Malaise, Gordon  
**Cc:** Connolly, Cathleen; Timmerman, David  
**Subject:** FW: Placement and Care Responsibility

**Importance:** High

**Attachments:** Placement and Care Drafting leg memo 2 11-6-06.doc



Placement and Care  
Drafting le...

Gordon,

I agree that DHFS/DCFS needs these changes to conform with federal requirements and get case files in order an upcoming CFSR tentatively scheduled for May 2008.

Please advise me of any problems you see with the revisions.

Thanks,

Dennis

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

**From:** Connolly, Cathleen [mailto:ConnoC1@dhfs.state.wi.us]  
**Sent:** Tuesday, November 07, 2006 9:27 AM  
**To:** Rhodes, Dennis - DOA  
**Cc:** Campbell, Mark D - DHFS; Jones, Jennifer A - DHFS; Mitchell, Mark S - DHFS; Timmerman, David J - DHFS; Tuohy, John O - DHFS; Durkin, Therese A - DHFS; Forsaith, Andrew C - DHFS; [wicourts.gov]; .Michelle.Jensen-Goodwin  
**Subject:** Fwd: Placement and Care Responsibility  
**Importance:** High

Hello Dennis,

I sent the attached e-mail to Gordon Malaise at Legislative Reference Bureau and he told me that because the placement and care responsibility is a DOA budget draft (LRB-0261) these additional instructions need to be sent through you.

We are still trying to achieve the goal of satisfying the federal Administration for Children and Families that when a child is taken out of his or her home, that child is in the placement and care of the agency that removed him or her. In the DHFS Biennial Budget Request 2007-2009 this issue was part of the DHFS/DCFS Statutory Language Requests Not Related to DINs, "Title IV-E -- Clarifying County Responsibilities".

We had a version drafted in late spring, which is what Gordon was working from for the budget, that the ACF did not believe it was sufficient. We believe the changes in this set of drafting instructions will meet their requirements.

Please let me know if you need additional information or authorization. Also please copy me when you communicate with Gordon. Thank you.

Cathleen Connolly  
Legislative and Policy Consultant  
Bureau of Programs and Policies  
Division of Children and Family Services Department of Health and Family Services  
608-261-8306  
connoc1@dhfs.state.wi.us

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

Date: 11/06/2006 02:24 pm -0600 (Monday)  
From: Cathleen Connolly  
To: Malaise, Gordon  
CC: Durkin, Therese; Jensen-Goodwin, Michelle; Mitchell, Mark;  
Timmerman, David  
Subject: Placement and Care Responsibility

Hi Gordon,

Thank you for your patience. I am attaching a memo outlining what the Dept. would like to be drafted to address the placement and care language that the Administration for Children and Families is seeking.

Please let me know if you have any questions. I will need to consult with others, but I will get back to you as quickly as possible.

Cathleen Connolly  
Legislative and Policy Consultant  
Bureau of Programs and Policies  
Division of Children and Family Services Department of Health and Family Services  
608-261-8306  
connoc1@dhfs.state.wi.us

DIVISION OF CHILDREN AND FAMILY SERVICES

TO: Gordon Malaise  
Legislative Reference Bureau  
FROM: Mark Mitchell  
Cathleen Connolly  
Bureau of Programs and Policies  
RE: Bill Draft for Placement and Care Responsibility  
DATE: November 6, 2006

The Department of Health and Family Services has requested changes to statute in the 2007-09 budget bill that would address the placement and care responsibility of the Bureau of Milwaukee Child Welfare and county human services and social services agencies for children that the agency removes from their home. This request is in response to a determination by the federal Administration for Children and Families (ACF) during a Title IV-E audit that Wisconsin statutes did not impose the responsibility for the care and placement of children placed in out-of-home care under a court order to county agencies or DHFS in Milwaukee County as ACF interprets federal Title IV-E requirements. The Wisconsin Attorney General submitted an information opinion explaining that current state law did impose this responsibility. Although federal staff accepted this opinion for the past audit purposes, it also required that the Department seek statutory change clarifying that county agencies have this authority and responsibility. The federal government has recently re-iterated its position that it will not be as flexible during the next title IV-E audit and may impose fiscal penalties on the state if this change is not made.

Staff from the Division and from Director of State Courts Office have engaged in discussions with staff from the ACF about the types of language the ACF would accept on Wisconsin court forms and within statute. We believe the following changes would address the concerns raised by federal staff.

1. Change the language of s. 48.355(2)(b)1. as follows: **remove** "or continuum of services"; **remove** "the identify of the agencies which are to be primarily responsible for the provision of services ordered by the judge, the identify of the person or agency who will provide case management or coordination of services, if any". (*this takes care of no. 7 on JC 1611*)
2. Change the language of s. 48.21(4)(b) as follows: **continue** "and order the child into the placement and care responsibility of the county department or the department in a county having a population of 500,000 or more." (*TPC orders*)
3. Change the language of s. 48.32(1)(b) as follows: **amend** "1. If at the time the consent decree is entered into the child is placed outside the home under a voluntary agreement ... or other living arrangement, the consent decree shall include: **The judge or court commissioner shall order the child into the placement and care responsibility of the county department or the department in a county having a population of 500,000 or more.,.**" The current statutes continues, "a finding that placement of the child ..." (*consent decree*)
4. Change the language of s. 48.355 as follows: **create** "(1m) When entering an order placing a child in out of home care, the court shall order the child into the placement and care responsibility of the county department under s. 46.22 or 46.23, Stats." (*dispositional orders*)
5. Change the language of s. 48.357 that addresses changes in placement from in-home to out of home and from out of home to out of home, to require that the judge order the child into the placement and care responsibility of the county department **or the department in a county having a population of 500,000 or more**, when making either kind of change. (*change in placement*)
6. Change the language of s. 48.63(1) as follows: **add at** "... Voluntary agreements may only be made under this subsection and sub.(5)(b) and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent or guardian or by the child if the child's consent to the agreement is required. The child's consent to the agreement is required whenever the child is 12 years of age or older. If a county department or the department is placing a child or negotiating or acting as an intermediary for the placement of a child, **the voluntary agreement shall also specifically state that county department or the department in a county**

If already  
out of home  
care & placement  
resp. already ordered

**having a population of 500,000 or more has placement and care responsibility for the child.”**  
*(voluntary placement agreements)*

We are also requesting parallel provisions in ch. 938, except that for ch. 938 orders placement and care responsibility should go to the appropriate public agency under ch. 938. A quick review of ch.938 indicates the appropriate public agency for placement and care responsibility will be either the county department (including in Milwaukee County) or for certain types of orders, DOC, but not DHFS.

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

LRB-0261/2dn

GMM:.....

date

JLD

Dennis and Cathy:

In reviewing this draft, please note all of the following:

1. Not every dispositional order involves an out-of-home placement. Accordingly, this draft retains s. 48.355 (2) (b) 1. as under current law, but limits its applicability to cases that do not involve an out-of-home placement. In addition, the draft creates s. 48.355 (2) (b) 1d. to apply to cases that do involve an out-of-home placement.

2. Because the DHFS instructions for creating s. 48.355 (1m) and amending s. 48.355 (2) (b) 1. call for eliminating a reference to "the agency primarily responsible for the provision of services ordered by the court" in orders placing a child outside the home and for replacing that reference with a reference to ordering "the child into the placement and care responsibility" of the county department or, in Milwaukee County, DHFS, numerous other provisions in ch. 48 that reference the "agency primarily responsible for providing services" to a child placed outside the home had to be amended to delete that reference and to substitute a reference to "the agency with placement and care responsibility" for such a child. DHFS legal and program staff will want to review this draft carefully to ensure that the treatment of all of those provisions conforms to DHFS' intent.

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