



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0261/3
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PMR

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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1 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

of human services or social services (county department)

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 under the supervision of a county department of human services or social services (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,

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or DHFS in Milwaukee County or the child's parent or guardian if the child is in the home. The bill requires the county department, DHFS, or DOC 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.

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.

in Milwaukee County, to DHFS. In addition, if the circuit court transfers legal custody of such a child to a county department, DHFS, or a licensed child welfare agency, the bill requires the circuit court to refer

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

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 those 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 those 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

1 a population of 500,000 or more, or agency primarily responsible for providing
2 services to the child under the custody order to file with the court sufficient
3 information for the judge or circuit court commissioner to make a finding as to
4 whether those reasonable efforts were made to prevent the removal of the child from
5 the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays,
6 after the date of on which the order is granted.

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

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

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

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

23 SECTION 4. 48.235 (4) (b) ^x of the statutes is amended to read:

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

4 **SECTION 5.** 48.235 (4m) (b) ^x of the statutes is amended to read:

5 48.235 (4m) (b) The court shall order the agency identified under s. 48.355 (2)
6 (b) 1. 48.33 (1) (c) as primarily responsible for the provision of services to notify the
7 guardian ad litem, if any, regarding actions to be taken under par. (a).

8 **SECTION 6.** 48.315 (2m) (a) 1. ^x of the statutes is amended to read:

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

16 **SECTION 7.** 48.32 (1) (b) 1. ^x of the statutes is renumbered 48.32 (1) (b) 1. (intro.)
17 and amended to read:

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

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

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

7 **c.** A finding as to whether the county department, department, or agency has
8 made reasonable efforts to achieve the goal of the child's permanency plan, unless
9 return of the child to the home is the goal of the permanency plan and the judge or
10 circuit court commissioner finds that any of the circumstances specified in s. 48.355
11 (2d) (b) 1. to 5. applies.

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

13 48.32 (1) (b) 1. d. If the child's placement or other living arrangement is under
14 the supervision of the county department or, in a county having a population of
15 500,000 or more, the department, an order ordering the child into the placement and
16 care responsibility of the county department or department as required under 42
17 USC 672 (a) (2) and assigning the county department or department primary
18 responsibility for providing services to the child.

19 **SECTION 9.** 48.335 (3g) ^x of the statutes is renumbered 48.335 (3g) (intro.) and
20 amended to read:

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

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

3 (b) That the county department, the department, in a county having a
4 population of 500,000 or more, or the agency primarily responsible for providing
5 services to the child has made reasonable efforts to prevent the removal of the child
6 from the home, while assuring that the child's health and safety are the paramount
7 concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5.
8 applies, ~~and specific information showing that.~~

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

13 **SECTION 10.** 48.355 (2) (b) 1. [✓] of the statutes is amended to read:

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

21 **SECTION 11.** 48.355 (2) (b) 6g. [✓] of the statutes is created to read:

22 48.355 (2) (b) 6g. If the child is placed outside the home under the supervision
23 of the county department or, in a county having a population of 500,000 or more, the
24 department, an order ordering the child into the placement and care responsibility
25 of the county department or department as required under 42 USC 672 (a) (2) and

1 assigning the county department or department primary responsibility for providing
2 services to the child.

3 **SECTION 12.** 48.357 (1) (am) 3.[✓] of the statutes is amended to read:

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

8 **SECTION 13.** 48.357 (1) (c) 3.[✓] of the statutes is amended to read:

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

16 **SECTION 14.** 48.357 (2m) (c)[✓] of the statutes is amended to read:

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

1 change in placement order shall contain the applicable order specified in sub. (2v)
2 (a) 1m. and the applicable statement specified in sub. (2v) (a) 2.

3 **SECTION 15.** 48.357 (2v) (a) 1m.^x of the statutes is created to read:

4 48.357 (2v) (a) 1m. If the change in placement order changes the placement of
5 a child who is under the supervision of the county department or, in a county having
6 a population of 500,000 or more, the department to a placement outside the child's
7 home, whether from a placement in the home or from another placement outside the
8 home, an order ordering the child into, or to be continued in, the placement and care
9 responsibility of the county department or department as required under 42 USC
10 672 (a) (2) and assigning the county department or department primary
11 responsibility, or continued primary responsibility, for providing services to the
12 child.

13 **SECTION 16.** 48.38 (2) (intro.)^x of the statutes is amended to read:

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

23 **SECTION 17.** 48.417 (2) (c)^x of the statutes is amended to read:

24 48.417 (2) (c) The agency primarily responsible for providing services to the
25 ~~child and the family~~ under a court order, if required under s. 48.355 (2) (b) 6. to make

1 reasonable efforts to make it possible for the child to return safely to his or her home,
2 has not provided to the family of the child, consistent with the time period in the
3 child's permanency plan, the services necessary for the safe return of the child to his
4 or her home.

5 **SECTION 18.** 48.425 (1) (c) [✓] of the statutes is amended to read:

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

17 **SECTION 19.** 48.43 (1) (am) ^x of the statutes is created to read:

18 48.43 (1) (am) If the department or a county department receives guardianship
19 or custody of the child under par. (a), an order ordering the child into the placement
20 and care responsibility of the department or county department as required under
21 42 USC 672 (a) (2) and assigning the department or county department primary
22 responsibility for providing services to the child.

23 **SECTION 20.** 48.43 (1) (cm) [✓] of the statutes is created to read:

24 48.43 (1) (cm) If a permanency plan has previously been prepared for the child,
25 a finding as to whether the agency primarily responsible for providing services to the

1 child has made reasonable efforts to achieve the goal of the child's permanency plan.
2 The court shall make the findings specified in this paragraph on a case-by-case basis
3 based on circumstances specific to the child and shall document or reference the
4 specific information on which those findings are based in the order. An order that
5 merely references this paragraph without documenting or referencing that specific
6 information in the order or an amended order that retroactively corrects an earlier
7 order that does not comply with this paragraph is not sufficient to comply with this
8 paragraph.

9 **SECTION 21.** 48.63 (1) of the statutes is amended to read:

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

1 or guardian or by the child if the child's consent to the agreement is required. The
2 child's consent to the agreement is required whenever the child is 12 years of age or
3 older. If a county department, the department of health and family services, or the
4 department of corrections places a child or negotiates or acts as intermediary for the
5 placement of a child under this subsection, the voluntary agreement shall also
6 specifically state that the county department, department of health and family
7 services, or department of corrections has placement and care responsibility for the
8 child as required under 42 USC 672 (a) (2) and has primary responsibility for
9 providing services to the child.

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

11 48.75 (1g) (c) 1. A statement that the public licensing agency issuing the license
12 is responsible has placement and care responsibility for the child as required under
13 42 USC 672 (a) (2) and has primary responsibility for providing services to the child
14 who is placed in the foster home, as specified in the agreement.

15 ~~**SECTION 23.** 55.055 (5) of the statutes is amended to read:~~

16 ~~55.055 (5) If a ward lives with his or her guardian, the guardian may make~~
17 ~~temporary protective placement of the ward, to provide the guardian with a vacation~~
18 ~~or to release the guardian temporarily for a family emergency. The temporary~~
19 ~~protective placement may be made for not more than 30 days but the court may, upon~~
20 ~~application, grant an additional period not to exceed 60 days in all. The application~~
21 ~~shall include any information that the court may reasonably deem necessary. When~~
22 ~~reviewing the application, the court shall provide the least restrictive temporary~~
23 ~~protective placement that is consistent with the needs of the ward. If the court~~
24 ~~provides for the temporary placement of a minor who is alleged to be developmentally~~
25 ~~disabled in a foster home, treatment foster home, group home, or residential care~~

1 center for children and youth, the order providing for that placement shall include
2 the findings and order specified in s. 55.12 (7m).

3 **SECTION 24.** 55.075 (2) (c) of the statutes is created to read:

4 55.075 (2) (c) If the petitioner intends to recommend placement of a minor who
5 is alleged to be developmentally disabled in a foster home, treatment foster home,
6 group home, or residential care center for children and youth, the petition shall
7 contain specific information showing that placement of the minor in his or her home
8 would be contrary to the welfare of the minor and, unless any of the circumstances
9 specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the
10 petitioner has made reasonable efforts to prevent the removal of the minor from the
11 home, while assuring that the health and safety of the minor are the paramount
12 concerns.

13 **SECTION 25.** 55.11 (1) (c) of the statutes is amended to read:

14 55.11 (1) (c) A medical, psychological, social, vocational, and educational
15 evaluation and review, if necessary, and any recommendations for or against
16 maintenance of partial legal rights as provided in s. 54.25 (2). The evaluation and
17 review shall include recommendations for the individual's placement that are
18 consistent with the requirements of s. 55.12 (3), (4), and (5). If placement of a minor
19 who is alleged to be developmentally disabled in a foster home, treatment foster
20 home, group home, or residential care center for children and youth is recommended,
21 the evaluation and review shall also include specific information showing that
22 placement of the minor in his or her home would be contrary to the welfare of the
23 minor and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5.
24 applies, specific information showing that the petitioner has made reasonable efforts

1 to prevent the removal of the minor from the home, while assuring that the health
2 and safety of the minor are the paramount concerns.

3 **SECTION 26.** 55.12 (7m) of the statutes is created to read:

4 55.12 (7m) If the court orders a minor who is developmentally disabled to be
5 placed in a foster home, treatment foster home, group home, or residential care
6 center for children and youth, the court shall order the minor into the placement and
7 care responsibility of the county department as required under 42 USC 672 (a) (2),
8 shall assign the county department primary responsibility for providing services to
9 the child, and shall include in the order a finding that placement of the minor in his
10 or her home would be contrary to the welfare of the minor and a finding that the
11 petitioner has made reasonable efforts to prevent the removal of the minor from the
12 home, while assuring that the health and safety of the minor are the paramount
13 concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5.
14 applies. The court shall make the findings specified in this subsection on a
15 case-by-case basis based on circumstances specific to the minor and shall document
16 or reference the specific information on which those findings are based in the court
17 order. A court order that merely references this subsection without documenting or
18 referencing that specific information in the court order or an amended court order
19 that retroactively corrects an earlier court order that does not comply with this
20 subsection is not sufficient to comply with this subsection.

21 **SECTION 27.** 55.135 (5m) of the statutes is created to read:

22 55.135 (5m) If the court orders temporary placement of a minor who is alleged
23 to be developmentally disabled in a foster home, treatment foster home, group home,
24 or residential care center for children and youth, the order shall include the findings
25 and order specified in s. 55.12 (7m).

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1 **SECTION 28.** 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 **SECTION 29.** 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 **SECTION 30.** 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 **SECTION 31.** 938.21 (5) (b) 1. d. of the statutes is created to read:

2 938.21 (5) (b) 1. d. If the juvenile is ~~being held in custody~~ under the supervision
3 of the county 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 **SECTION 32.** 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 **SECTION 33.** 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 **SECTION 34.** 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 **SECTION 35.** 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 **SECTION 36.** 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 **SECTION 37.** 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 **SECTION 38.** 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 **SECTION 39.** 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 **SECTION 40.** 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 **SECTION 41.** 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 **SECTION 42.** 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 **SECTION 43.** 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 **SECTION 44.** 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 (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.

(a) and ~~MMB~~ ✓

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)(am), 767.451 (7), 938.21 (5) (c), 938.235 (4) (b), 938.32 (1) (c) 1. d., 938.355 (2) (b)
 5 1. and 6g., (6) (d) 1., and (6m) (a) 1g., 938.357 (1) (am) 3. and (c) 3., (2m) (c), and (2v)
 6 (a) 1m., and 938.38 (2) (intro.) of the statutes, the renumbering and amendment of
 7 sections 48.21 (5) (b) 1., 48.32 (1) (b) 1., and 938.21 (5) (b) 1. of the statutes and the
 8 creation of sections 48.21 (5) (b) 1. d., 48.32 (1) (b) 1. d., and 938.21 (5) (b) 1. d. of the
 9 statutes first apply to court orders granted on the effective date of this paragraph.

10 (c) *Voluntary agreements placing child outside home.* The treatment of sections
 11 48.63 (1) and 48.75 (1g) (c) 1. of the statutes first applies to voluntary agreements
 12 placing a child outside the home entered into on the effective date of this paragraph.

~~(d) *Protective placements of minors.*~~

14 1. 'Petitions.' The treatment of sections 55.075 (2) (c), 55.11 (1) (c), and 55.12
 15 (7m) of the statutes first applies to petitions requesting the protective placement of
 16 a minor filed on the effective date of this subdivision.

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

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

(END)

Insert A

#20

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

NO #

(edit insert)

Insert 14-25

Section #. 767.41 (3) (a) ^x of the statutes is amended to read:

, or, in a county having a population of 500,000 ^{or more}, the
department of health and family services

767.41 (3) (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the 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, as defined in s. 48.02 (15), to a county department, as defined under s. 48.02 (2g), [✓] or to a licensed child welfare agency. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under s. 48.415.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130; 2005 a. 101, 174, 264; 2005 a. 443 ss. 29, 94 to 98; Stats. 2005 s. 767.41; 2005 a. 471 ss. 1 to 5; ss. 13.93 (1) (b) and (2) (c).

20
A

If the court transfers legal custody under this section [✓] to an
agency, the court shall also refer the matter to the court
intake worker, as defined in s. 48.02 (3), [✓] who shall
conduct an inquiry under s. 48.24 [✓] to determine
whether a petition should be filed under s. 48.13.

(ced. of act)

D-Note

Dennis:

Cathy inquired whether it would be good drafting
48.02

to define "placement and care responsibility" in s. 48.02

to replace the description, i.e. "as required under

42 usc 672 (a)(2)," found throughout the draft.

48.02

In my opinion, defining the term in s. 48.02 would not

result in any greater ^{efficiency} efficiency or economy because: 1)

"as required under 42 usc 672 (a)(2)" is a short phrase;

and

and 2) a reader who is curious about what

"care and placement responsibility" means would have to take

(if, indeed, the reader is even aware that it is a defined term)

two steps, first to s. 48.02, then to 42 usc 672

(a)(2), to find out what the phrase means. The curious

reader can save a step and go directly to 42 usc 672

(a)(2) if the phrase complete phrase is used in the

substantive provisions of ch. 48. and 938

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0261/4dn
GMM:jld:nwn

January 11, 2007

Dennis:

Cathy inquired whether it would be good drafting to define "placement and care responsibility" in s. 48.02 to replace the description, *i.e.*, "as required under 42 USC 672 (a) (2)," found throughout the draft. In my opinion, defining the term in s. 48.02 would not result in any greater efficiency or economy because: 1) "as required under 42 USC 672 (a) (2)" is a short phrase; and 2) a reader who is curious about what "care and placement responsibility" means would have to take two steps, first to s. 48.02 (if, indeed, the reader is even aware that it is a defined term), then to 42 USC 672 (a) (2), to find out what the phrase means. The curious reader can save a step and go directly to 42 USC 672 (a) (2) if the complete phrase is used in the substantive provisions of ch. 48.

Gordon M. Malaise
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E-mail: gordon.malaise@legis.wisconsin.gov



State of Wisconsin
2007 - 2008 LEGISLATURE

DN-SE

LRB-0261/4

GMM:jld:nwn

S
MR

§CS

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen Cat.

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

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 those 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 those 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

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 **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 or, 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.

13 **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.

22 **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 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).

1 **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 **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 **SECTION 7.** 48.32 (1) (b) 1. of the statutes is renumbered 48.32 (1) (b) 1. (intro.)
14 and amended to read:

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

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 **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.

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 **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 **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 **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 **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 **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 **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 **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 **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 **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.

15 **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 **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

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 **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

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

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

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

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

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

1 who shall conduct an inquiry under s. 48.24 to determine whether a petition should
2 be filed under s. 48.13.

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

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

21 **SECTION 25.** 767.451 (7) of the statutes is amended to read:

22 767.451 (7) TRANSFER TO DEPARTMENT. The court may order custody transferred
23 to the department of health and family services only if that department agrees to
24 accept custody. If the court orders custody transferred to the department of health

1 and family services, the order transferring custody shall include the findings and
2 order specified in s. 767.41 (3) (am).

3 **SECTION 26.** 938.21 (5) (b) 1. of the statutes is renumbered 938.21 (5) (b) 1. a.
4 and amended to read:

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

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

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

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

1 than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of on
2 which the order is granted.

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

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

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

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

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

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

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

22 938.315 (2m) (a) The court making an initial finding under s. 938.21 (5) (b) 1.
23 or 1m., 938.355 (2) (b) 6., or 938.357 (2v) (a) 1. that reasonable efforts have been made
24 to prevent the removal of the juvenile from the home, while assuring that the
25 juvenile's health and safety are the paramount concerns, or an initial finding under

1 s. 938.21 (5) (b) 3., 938.355 (2) (b) 6r., or 938.357 (2v) (a) 3. that those efforts were not
2 required to be made because a circumstance specified in s. 938.355 (2d) (b) 1. to 4.
3 applies, more than 60 days after the date on which the juvenile was removed from
4 the home.

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

6 938.32 (1) (c) 1. d. If the juvenile's placement or other living arrangement is
7 under the supervision of the county department, an order ordering the juvenile into
8 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 for
10 providing services to the juvenile.

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

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

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

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

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

1 938.355 (6) (d) 1. Placement of the juvenile in a secure detention facility or
2 juvenile portion of a county jail that meets the standards promulgated by the
3 department by rule or in a place of nonsecure custody, for not more than 10 days and
4 the provision of educational services consistent with his or her current course of
5 study during the period of placement. The juvenile shall be given credit against the
6 period of detention or nonsecure custody imposed under this subdivision for all time
7 spent in secure detention in connection with the course of conduct for which the
8 detention or nonsecure custody was imposed. If the court orders placement of the
9 juvenile in a place of nonsecure custody under the supervision of the county
10 department, the court shall order the juvenile into the placement and care
11 responsibility of the county department as required under 42 USC 672 (a) (2) and
12 shall assign the county department primary responsibility for providing services to
13 the juvenile.

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

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

1 If the court orders placement of the juvenile in a place of nonsecure custody under
2 the supervision of the county department, the court shall order the juvenile into the
3 placement and care responsibility of the county department as required under 42
4 USC 672 (a) (2) and shall assign the county department primary responsibility for
5 providing services to the juvenile.

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

7 938.357 (1) (am) 3. If the court changes the juvenile's placement from a
8 placement outside the home to another placement outside the home, the change in
9 placement order shall contain ~~one of the statements~~ the applicable order under sub.
10 (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2.

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

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

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

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

1 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v)
2 (a) 3. If the court changes the juvenile's placement from a placement outside the
3 home to another placement outside the home, the change in placement order shall
4 contain the applicable order under sub. (2v) (a) 1m. and the applicable statement
5 under sub. (2v) (a) 2.

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

7 938.357 (2v) (a) 1m. If the change in placement order changes the placement
8 of a juvenile who is under the supervision of the county department to a placement
9 outside the juvenile's home, whether from a placement in the home or from another
10 placement outside the home, an order ordering the juvenile into, or to be continued
11 in, the placement and care responsibility of the county department as required under
12 42 USC 672 (a) (2) and assigning the county department primary responsibility, or
13 continued primary responsibility, for providing services to the juvenile.

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

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

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

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

GMM:gis:

DNOTE

Dennis:

This redraft simply deletes from s. 48.37

48.63 (1) all references to the department ^(I) of ^(I)

^(I) health and family services. ^(I) By deleting that

reference ~~effective immediately~~, s. 48.63 (1) will not have to

in this draft

~~be double drafted~~ be included in LRB-1261, ~~and~~,

~~there~~ which will result in one less conflict to reconcile

when we put the budget together. Because "department" is

a defined term in ch. 48, deleting "of health and family

services" does not result in any ^{substantive} substantive change.

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0261/5dn
GMM:cjs:pg

January 26, 2007

Dennis:

This redraft simply deletes from s. 48.63 (1) all references to the department *of health and family services*. By deleting that reference in this draft, s. 48.63 (1) will not have to be included in LRB-1261, which will result in one less conflict to reconcile when we put the budget together. Because "department" is a defined term in ch. 48, deleting "of health and family services" does not result in any substantive change.

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