

2009 DRAFTING REQUEST

Bill

Received: **03/31/2009**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Council - JLC 7-9485**

By/Representing: **Anne Sappenfield**

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: **YES**

Requester's email: **anne.sappenfield@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Child taken into custody; notice tor relatives

Instructions:

See attached--draft companion to -2323/1.

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 03/31/2009 | jdye 03/31/2009 | | _____ | | | S&L |
| /1 | | | mduchek 03/31/2009 | _____ | sbasford 03/31/2009 | sbasford 03/31/2009 | |

FE Sent For:

<END>

↳ At Intro.

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| /? | gmalaise | 1/3 3/31 jld | |  | | | |
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3/31

FE Sent For:

<END>

Malaise, Gordon

From: Sappenfield, Anne
Sent: Tuesday, March 31, 2009 9:00 AM
To: Malaise, Gordon

Hi Gordon,

I need an additional version of LRB-2323/1 because we are introducing companion bills. Thanks!

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
(608) 267-9485



State of Wisconsin
2009-2010 LEGISLATURE

IN 3/31

-2498/1
LRB 2323/1
GMM/jld:rs
Stays

2009 BILL

Soon
Companion - No change
DATE

LPS-
check
auto refs
please

✓

Regen

1 AN ACT *to amend* 48.38 (4) (bm); and *to create* 48.21 (3) (f), 48.21 (5) (e), 48.78
2 (2) (i) and 48.981 (7) (a) 4m. of the statutes; **relating to:** requiring notice to
3 relatives when a child is taken into custody and disclosure of information to
4 relatives for the purpose of facilitating a relationship or placement. ✓

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Special Committee on Strengthening Wisconsin Families.

Under the Children's Code, a child may be placed with a relative when the child is taken into temporary custody, as a disposition, or as a permanent placement. In addition, in a dispositional order for a child in need of protection or services (CHIPS) proceeding, if there is no less drastic alternative for a child than transferring custody from the parent, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) must consider transferring custody to a relative whenever possible. The agency preparing a permanency plan for a child must also include in the plan a statement

BILL

as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate. Finally, before the Department of Children and Families (DCF), a county department of human services or social services (county department), or a child welfare agency may place a child for adoption, that agency must consider the availability of an adoptive placement with a relative of the child who is identified in the permanency plan or otherwise known by that agency.

Federal law, 42 USC 671 (a) (29), effective October 7, 2008, requires that within 30 days after the removal of a child from the custody of the parent or parents of the child, the state must exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that does all of the following:

- Specifies that the child has been or is being removed from the custody of the parent or parents of the child.
- Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice.
- Describes the requirements to become a foster family home and the additional services and supports that are available for children placed in such a home.
- If the state has elected the option to make kinship guardianship assistance payments, describes how the relative guardian of the child may subsequently enter into an agreement with the state to receive the payments. Wisconsin does not currently provide kinship guardianship assistance payments.

Current Wisconsin law also requires the agency that is assigned primary responsibility for providing services to a child placed outside the home to prepare a written permanency plan for the child if certain conditions are met.

Finally, under current law, records maintained by an agency under the Children's Code and child abuse and neglect records are confidential and may be disclosed only under exceptions set forth in current law.

This bill modifies current law relating to temporary custody hearings under the Children's Code. Under the bill, the juvenile court must justify order the county department or, in Milwaukee County, DCF to conduct a diligent search in order to locate and provide notice of certain information specified in the bill to all adult relatives of the child within 30 days after the temporary custody hearing. The bill, for purposes of notification, defines "adult relative" as a grandparent, great-grandparent, aunt, uncle, or sibling of the child who has attained 18 years of age. The bill also requires the county department or DCF to notify any other adult relative or other individual whose home is recommended as a placement option by the parent. The county department or DCF may not provide notice to an adult relative or other individual if the county department or DCF has reason to believe that it would be dangerous to the child or to the parent if the child were placed with that adult relative or other individual.

The bill requires the notice to include all of the following:

- A statement that the child has been removed from the custody of the child's parent.
- A statement that the child may need a temporary or permanent placement outside of his or her home and an explanation of how the adult relative or other individual may request having the child placed with him or her.
- An explanation of the programs and services that may be available to the adult relative or other individual if the child is placed with him or her including foster care payments, kinship care payments, assistance with health care needs, child care assistance, and nutrition assistance.

BILL

- A description of the types of expenses the adult relative or other individual may incur if the child is placed in his or her home and whether and when the adult relative or other individual may be reimbursed for those expenses.

- An explanation of how to receive notice of future proceedings relating to the child if the adult relative or other individual provides contact information to the county department or DCF within the time specified in the notice.

The bill also provides that, at the temporary custody hearing, if the parent is present, he or she must be requested to provide the names of 3 adult relatives or family friends whose homes the parent would like the juvenile court to consider as placement options for the child. If the parent is not present at the hearing, the county department or DCF must make a reasonable effort to request that information from each parent.

In addition, the bill requires a child's permanency plan to include a statement of what efforts were made to comply with the notification requirements in the bill and to notify other adult individuals whose homes have been identified by the child as potential placements for the child.

Finally, the bill creates an exception to the confidentiality of agency and child abuse and neglect records so that the county department or DCF may disclose information to a relative of a child who is placed outside his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative.

1 **SECTION 1.** 48.21 (3) (f) of the statutes is created to read:

2 48.21 (3) (f) If present at the hearing, the parent shall be requested to provide
3 the names and other identifying information of 3 relatives of the child or family
4 friends 18 years of age or over whose homes the parent requests the court to consider
5 as placements for the child. If the parent does not provide this information at the
6 hearing, the county department or, in a county having a population of 500,000 or
7 more, the department shall make a reasonable effort to provide each parent with the
8 opportunity to provide this information.

NOTE: Provides that, if a parent is present at a temporary custody hearing, the parent must be requested to provide the names and other identifying information of 3 relatives of the child or family friends 18 years of age or over whose homes the parent requests the juvenile court to consider as placements for the child. If the parent does not provide this information at the hearing, the county department or, in Milwaukee County, DCF must make a reasonable effort to provide each parent with the opportunity to provide this information.

9 **SECTION 2.** 48.21 (5) (e) of the statutes is created to read:

10 48.21 (5) (e) 1. In this paragraph, "adult relative" means a grandparent,
11 great-grandparent, aunt, uncle, or sibling of a child, whether by blood, marriage, or
12 legal adoption, who has attained 18 years of age.

BILL

1 2. The court shall order the county department or, in a county having a
2 population of 500,000 or more, the department to conduct a diligent search in order
3 to locate and provide notice of the information specified in this subdivision[✓] to all
4 adult relatives of the child and to all other adult individuals whose homes are
5 requested by the child's parent under sub. (3) (f) to be considered as placement
6 options for the child within 30 days after the date of the hearing unless the child is
7 returned to his or her home within that period. The county department or
8 department may not provide that notice to an adult relative or other individual if the
9 county department or the department has reason to believe that it would be
10 dangerous to the child or to the parent if the child were placed with that adult relative
11 or other individual. The notice shall include all of the following:

12 a. A statement that the child has been removed from the custody of the child's
13 parent.

14 b. A statement that the child may need a temporary or permanent placement
15 outside of his or her home and an explanation of how the adult relative or other
16 individual may request to have the child placed with him or her.

17 c. An explanation of the programs and services that may be available to the
18 adult relative or other individual if the child is placed with him or her including foster
19 care payments, kinship care payments, assistance with health care needs, child care
20 assistance, and nutrition assistance.

21 d. A description of the types of expenses that the adult relative or other
22 individual may incur if the child is placed in his or her home and whether and when
23 the adult relative or other individual may be reimbursed for those expenses.

BILL

1 e. An explanation of how to receive notice of future proceedings relating to the
2 child if the adult relative or other individual provides contact information to the
3 county department or the department.

NOTE: Provides that when the juvenile court orders a child to be continued in custody at the temporary custody hearing, the juvenile court must order the county department or DCF to conduct a diligent search in order to locate and provide notice of certain information to all adult relatives of the child and to all other adult individuals whose homes are requested by the child's parent to be considered as placement options for the child within 30 days after the hearing unless the child is returned to his or her home within that period. The county department or DCF may not provide that notice to an adult relative or other individual if the county department or DCF has reason to believe that it would be dangerous to the child or to the parent if the child were placed with that adult relative or other individual. The notice must state that the child has been taken into custody and may need a temporary or permanent placement, explain the various programs and services that may be available if the child is placed with the adult relative or other individual, describe the types of expenses that may be incurred if the child is placed with the adult relative or other individual, and explain how the adult relative or other individual may receive notice of future proceedings relating to the child.

4 **SECTION 3.** 48.38 (4) (bm) of the statutes is amended to read:

5 48.38 (4) (bm) A statement as to the availability of a safe and appropriate
6 placement with a fit and willing relative of the child and, if of what efforts were made
7 to comply with an order under s. 48.21 (5) (e) requiring notification of all adult
8 relatives of the child and all other adult individuals whose homes have been
9 requested by the child's parent to be considered as potential placements for the child
10 and to notify all other adult individuals whose homes have been requested by the
11 child to be considered as potential placements for the child. If a decision is made not
12 to place the child with an available relative, or individual identified by the child's
13 parent or the child, the permanency plan shall include a statement as to why
14 placement with the relative, or other individual is not safe or appropriate.

NOTE: Modifies current law relating to permanency plans for children placed outside their home so that the plan must include a statement of what efforts were made to comply with an order to notify certain adult relatives and other adult individuals under SECTION 2 of the bill, and to notify other adult individuals whose homes have been identified by the child as potential placements for the child.

*

l.a.s.

15 **SECTION 4.** 48.78 (2) (i) of the statutes is created to read:

BILL

1 48.78 (2) (i) Paragraph (a) does not prohibit an agency from disclosing
 2 information to a relative of a child placed outside of his or her home only to the extent
 3 necessary to facilitate the establishment of a relationship between the child and the
 4 relative or a placement of the child with the relative. In this paragraph, "relative"
 5 includes a relative whose relationship is derived through a parent of the child whose
 6 parental rights are terminated.

7 **SECTION 5.** 48.981 (7) (a) 4m. of the statutes is created to read:

8 48.981 (7) (a) 4m. A relative of a child placed outside of his or her home only
 9 to the extent necessary to facilitate the establishment of a relationship between the
 10 child and the relative or a placement of the child with the relative. In this
 11 subdivision, "relative" includes a relative whose relationship is derived through a
 12 parent of the child whose parental rights are terminated.

a.r. → ← a.r.

*

NOTE: SECTIONS 4 and 5 create an exception to the confidentiality of social service agency records under the Children's Code and child abuse and neglect records to permit disclosure to a relative of a child placed outside of his or her home only to the extent necessary to establish a relationship between the child and the relative or a placement of the child with the relative.

13

(END)

d-note
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

March 31, 2009

LRB-2323/1dn
GMM:jld:rs

2498
↑
Stays

Anne:

Because the committee did not consider including the parallel changes to ch. 938[✓] in the draft, this redraft removes those changes. ✓ Those changes, however, should be restored by amendment once the bill is introduced.

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

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GMM:jld:md

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Basford, Sarah

From: Sappenfield, Anne
Sent: Tuesday, March 31, 2009 2:14 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-2498/1 Topic: Child taken into custody; notice tor elatives

Please Jacket LRB 09-2498/1 for the ASSEMBLY.