



2011 SENATE BILL 63

April 18, 2011 – Introduced by Senators LAZICH and GALLOWAY. Referred to Committee on Public Health, Human Services, and Revenue.

1 **AN ACT to renumber and amend** 48.365 (2g) (b) 3. and 938.365 (2g) (b) 3.; **to**
2 **amend** 48.38 (5) (c) 6. (intro.), 48.417 (1) (a), 48.417 (2) (intro.) and 938.38 (5)
3 (c) 6. (intro.); **to repeal and recreate** 48.365 (2g) (b) 3., 48.38 (5) (c) 6. (intro.),
4 48.417 (1) (a), 938.365 (2g) (b) 3. and 938.38 (5) (c) 6. (intro.); and **to create**
5 48.365 (2g) (b) 3. a. to d., 48.38 (5) (c) 6m., 48.417 (1) (am), 938.365 (2g) (b) 3.
6 a. to d. and 938.38 (5) (c) 6m. of the statutes; **relating to:** a requirement that
7 termination of parental rights petitions be filed with respect to children under
8 eight years of age, and certain children eight years of age or over, who have been
9 placed outside the home for six months.

Analysis by the Legislative Reference Bureau

Under current law, the parental rights of a parent to his or her child may be terminated involuntarily under various grounds, including the ground of continuing need of protection or services, which may be established by proving: 1) that the child has been adjudged to be in need of protection or services and placed outside of his or her home by the court assigned to exercise jurisdiction under the Children's Code (juvenile court); 2) that the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the juvenile court;

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3) that the child has been outside the home for a cumulative period of six months or longer pursuant to juvenile court orders; and 4) that the parent has failed to meet the conditions established for the safe return of the child to the home, and there is a substantial likelihood that the parent will not meet those conditions within the nine-month period following the termination of parental rights (TPR) fact-finding hearing.

Current law, subject to certain exceptions, requires the filing of a TPR petition with respect to a child who has been placed in a foster home, group home, nonsecured residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the child was a runaway from that placement or the first six months of a trial home visit. A person responsible for filing TPR petitions, however, is not required to file a TPR petition with respect to such a child if the child is being cared for by a relative, if a TPR is not in the best interests of the child, if the agency primarily responsible for providing services to the child and the family is required to make reasonable efforts to make it possible for the child to return safely home and has not provided the services necessary for that safe return, or if grounds for TPR do not exist.

This bill, subject to the exceptions under current law, requires a TPR petition to be filed with respect to a child who has been placed outside of his or her home in any out-of-home placement for a cumulative total period of six months, not including any period during which the child was a runaway from the out-of-home placement or any period during which the child was returned to his or her home for a trial home visit, if any of the following applies:

1. The child was under eight years of age when he or she was placed outside of his or her home.

2. The child was eight years of age or over when he or she was placed outside of his or her home and the goal of the child's permanency plan, which is a plan designed to ensure that a child is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing long-term stability, is placement for adoption with an adoptive parent or a proposed adoptive parent of a sibling who was under eight years of age when the sibling was placed outside of his or her home.

3. The child was eight years of age or over when he or she was placed outside of his or her home, and the child's permanency plan indicates that a safe and appropriate placement with a proposed adoptive parent is available for the child and that the child has expressed the wish to be adopted.

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:

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1 **SECTION 1.** 48.365 (2g) (b) 3. of the statutes, as affected by 2009 Wisconsin Act
2 79, section 43, and 2011 Wisconsin Act (this act), is repealed and recreated to read:

3 48.365 **(2g)** (b) 3. A statement of whether or not a recommendation has been
4 made to terminate the parental rights of the parents of the child if any of the
5 following applies:

6 a. Subject to subd. 3. b. to d., the child has been placed outside of his or her home
7 in a foster home, group home, nonsecured residential care center for children and
8 youth, or shelter care facility for 15 of the most recent 22 months, not including any
9 period during which the child was a runaway from the out-of-home placement or the
10 first 6 months of any period during which the child was returned to his or her home
11 for a trial home visit.

12 b. The child has been placed outside of his or her home for a cumulative total
13 period of 6 months, not including any period during which the child was a runaway
14 from the out-of-home placement or any period during which the child was returned
15 to his or her home for a trial home visit, and was under 8 years of age when he or she
16 was placed outside of his or her home.

17 c. The child has been placed outside of his or her home for a cumulative total
18 period of 6 months, not including any period during which the child was a runaway
19 from the out-of-home placement or any period during which the child was returned
20 to his or her home for a trial home visit, the child was 8 years of age or over when he
21 or she was placed outside of his or her home, and the goal of the child's permanency
22 plan is placement for adoption with an adoptive parent or a proposed adoptive parent
23 of a sibling, as defined in s. 48.38 (4) (br) 1., who was under 8 years of age when the
24 sibling was placed outside of his or her home.

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1 d. The child has been placed outside of his or her home for a cumulative total
2 period of 6 months, not including any period during which the child was a runaway
3 from the out-of-home placement or any period during which the child was returned
4 to his or her home for a trial home visit, the child was 8 years of age or over when he
5 or she was placed outside of his or her home, and the child's permanency plan
6 indicates that a safe and appropriate placement with a proposed adoptive parent is
7 available for the child and that the child has expressed the wish to be adopted.

8 **SECTION 2.** 48.365 (2g) (b) 3. of the statutes, as affected by 2009 Wisconsin Act
9 79, section 42, is renumbered 48.365 (2g) (b) 3. (intro.) and amended to read:

10 48.365 **(2g)** (b) 3. (intro.) ~~If the child has been placed outside of his or her home~~
11 ~~in a foster home, treatment foster home, group home, nonsecured residential care~~
12 ~~center for children and youth, or shelter care facility for 15 of the most recent 22~~
13 ~~months, not including any period during which the child was a runaway from the~~
14 ~~out-of-home placement or the first 6 months of any period during which the child~~
15 ~~was returned to his or her home for a trial home visit, a A statement of whether or~~
16 ~~not a recommendation has been made to terminate the parental rights of the parents~~
17 ~~of the child. if any of the following applies:~~

18 4. If the statement under subd. 3. indicates that a recommendation for a
19 termination of parental rights has been made, ~~the statement shall indicate a~~
20 statement indicating the date on which the recommendation was made, any previous
21 progress made to accomplish the termination of parental rights, any barriers to the
22 termination of parental rights, specific steps to overcome the barriers and when the
23 steps will be completed, reasons why adoption would be in the best interest of the
24 child, and whether or not the child should be registered with the adoption
25 information exchange. If the statement under subd. 3. indicates that a

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1 recommendation for termination of parental rights has not been made, the
2 ~~statement shall include an explanation of a statement explaining~~ the reasons why
3 a recommendation for termination of parental rights has not been made. If the lack
4 of appropriate adoptive resources is the primary reason for not recommending a
5 termination of parental rights, the agency shall recommend that the child be
6 registered with the adoption information exchange or report the reason why
7 registering the child is contrary to the best interest of the child.

8 **SECTION 3.** 48.365 (2g) (b) 3. a. to d. of the statutes are created to read:

9 48.365 **(2g)** (b) 3. a. Subject to subd. 3. b. to d., the child has been placed outside
10 of his or her home in a foster home, treatment foster home, group home, nonsecured
11 residential care center for children and youth, or shelter care facility for 15 of the
12 most recent 22 months, not including any period during which the child was a
13 runaway from the out-of-home placement or the first 6 months of any period during
14 which the child was returned to his or her home for a trial home visit.

15 b. The child has been placed outside of his or her home for a cumulative total
16 period of 6 months, not including any period during which the child was a runaway
17 from the out-of-home placement or any period during which the child was returned
18 to his or her home for a trial home visit, and was under 8 years of age when he or she
19 was placed outside of his or her home.

20 c. The child has been placed outside of his or her home for a cumulative total
21 period of 6 months, not including any period during which the child was a runaway
22 from the out-of-home placement or any period during which the child was returned
23 to his or her home for a trial home visit, the child was 8 years of age or over when he
24 or she was placed outside of his or her home, and the goal of the child's permanency
25 plan is placement for adoption with an adoptive parent or a proposed adoptive parent

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1 of a sibling, as defined in s. 48.38 (4) (br) 1., who was under 8 years of age when the
2 sibling was placed outside of his or her home.

3 d. The child has been placed outside of his or her home for a cumulative total
4 period of 6 months, not including any period during which the child was a runaway
5 from the out-of-home placement or any period during which the child was returned
6 to his or her home for a trial home visit, the child was 8 years of age or over when he
7 or she was placed outside of his or her home, and the child's permanency plan
8 indicates that a safe and appropriate placement with a proposed adoptive parent is
9 available for the child and that the child has expressed the wish to be adopted.

10 **SECTION 4.** 48.38 (5) (c) 6. (intro.) of the statutes, as affected by 2009 Wisconsin
11 Act 79, section 62, is amended to read:

12 48.38 (5) (c) 6. (intro.) If Subject to subd. 6m., if the child has been placed
13 outside of his or her home, as described in s. 48.365 (1), in a foster home, treatment
14 foster home, group home, nonsecured residential care center for children and youth,
15 or shelter care facility for 15 of the most recent 22 months, not including any period
16 during which the child was a runaway from the out-of-home placement or the first
17 6 months of any period during which the child was returned to his or her home for
18 a trial home visit, the appropriateness of the permanency plan and the
19 circumstances which prevent the child from any of the following:

20 **SECTION 5.** 48.38 (5) (c) 6. (intro.) of the statutes, as affected by 2009 Wisconsin
21 Act 79, section 63, and 2011 Wisconsin Act (this act), is repealed and recreated to
22 read:

23 48.38 (5) (c) 6. (intro.) Subject to subd. 6m., if the child has been placed outside
24 of his or her home, as described in s. 48.365 (1), in a foster home, group home,
25 nonsecured residential care center for children and youth, or shelter care facility for

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1 15 of the most recent 22 months, not including any period during which the child was
2 a runaway from the out-of-home placement or the first 6 months of any period
3 during which the child was returned to his or her home for a trial home visit, the
4 appropriateness of the permanency plan and the circumstances which prevent the
5 child from any of the following:

6 **SECTION 6.** 48.38 (5) (c) 6m. of the statutes is created to read:

7 48.38 (5) (c) 6m. The appropriateness of the permanency plan and the
8 circumstances that prevent the child from being placed for adoption or having a
9 petition for the involuntary termination of parental rights filed on behalf of the child
10 if the child has been placed outside of his or her home, as described in s. 48.365 (1),
11 for a cumulative total period of 6 months, not including any period during which the
12 child was a runaway from the out-of-home placement or any period during which
13 the child was returned to his or her home for a trial home visit, and if any of the
14 following applies:

15 a. The child was under 8 years of age when he or she was placed outside of his
16 or her home.

17 b. The child was 8 years of age or over when he or she was placed outside of his
18 or her home and the goal of the child's permanency plan is placement for adoption
19 with an adoptive parent or a proposed adoptive parent of a sibling, as defined in s.
20 48.38 (4) (br) 1., who was under 8 years of age when the sibling was placed outside
21 of his or her home.

22 c. The child was 8 years of age or over when he or she was placed outside of his
23 or her home and the child's permanency plan indicates that a safe and appropriate
24 placement with a proposed adoptive parent is available for the child and that the
25 child has expressed the wish to be adopted.

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1 **SECTION 7.** 48.417 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 79,
2 section 77, is amended to read:

3 48.417 (1) (a) The Subject to par. (am), the child has been placed outside of his
4 or her home, as described in s. 48.365 (1) or 938.365 (1), in a foster home, treatment
5 foster home, group home, nonsecured residential care center for children and youth,
6 or shelter care facility for 15 of the most recent 22 months, not including any period
7 during which the child was a runaway from the out-of-home placement or the first
8 6 months of any period during which the child was returned to his or her home for
9 a trial home visit. If the circumstances specified in this paragraph apply, the petition
10 shall be filed or joined in by the last day of the 15th month, as described in this
11 paragraph, for which the child was placed outside of his or her home.

12 **SECTION 8.** 48.417 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 79,
13 section 78, and 2011 Wisconsin Act (this act), is repealed and recreated to read:

14 48.417 (1) (a) Subject to par. (am), the child has been placed outside of his or
15 her home, as described in s. 48.365 (1) or 938.365 (1), in a foster home, group home,
16 nonsecured residential care center for children and youth, or shelter care facility for
17 15 of the most recent 22 months, not including any period during which the child was
18 a runaway from the out-of-home placement or the first 6 months of any period
19 during which the child was returned to his or her home for a trial home visit. If the
20 circumstances specified in this paragraph apply, the petition shall be filed or joined
21 in by the last day of the 15th month, as described in this paragraph, for which the
22 child was placed outside of his or her home.

23 **SECTION 9.** 48.417 (1) (am) of the statutes is created to read:

24 48.417 (1) (am) 1. The child has been placed outside of his or her home, as
25 described in s. 48.365 (1) or 938.365 (1), for a cumulative total period of 6 months,

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1 not including any period during which the child was a runaway from the
2 out-of-home placement or any period during which the child was returned to his or
3 her home for a trial home visit, and any of the following applies:

4 a. The child was under 8 years of age when he or she was placed outside of his
5 or her home.

6 b. The child was 8 years of age or over when he or she was placed outside of his
7 or her home and the goal of the child's permanency plan is placement for adoption
8 with an adoptive parent or a proposed adoptive parent of a sibling, as defined in s.
9 48.38 (4) (br) 1., who was under 8 years of age when the sibling was placed outside
10 of his or her home.

11 c. The child was 8 years of age or over when he or she was placed outside of his
12 or her home and the child's permanency plan indicates that a safe and appropriate
13 placement with a proposed adoptive parent is available for the child and that the
14 child has expressed the wish to be adopted.

15 2. If the circumstances specified in subd. 1. apply, the petition shall be filed or
16 joined in by the last day of the 6th month, as described in subd. 1., for which the child
17 was placed outside of his or her home.

18 **SECTION 10.** 48.417 (2) (intro.) of the statutes is amended to read:

19 48.417 (2) FILING OR JOINING IN PETITION; WHEN NOT REQUIRED. (intro.)
20 Notwithstanding that any of the circumstances specified in sub. (1) (a), (am), (b), (c),
21 or (d) may apply, an agency or the district attorney, corporation counsel, or other
22 appropriate official designated under s. 48.09 need not file a petition under s. 48.42
23 (1) to terminate the parental rights of a parent or the parents of a child, or, if a
24 petition under s. 48.42 (1) to terminate those parental rights has already been filed,

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1 the agency, district attorney, corporation counsel, or other appropriate official need
2 not join in the petition, if any of the following circumstances apply:

3 **SECTION 11.** 938.365 (2g) (b) 3. of the statutes, as affected by 2009 Wisconsin
4 Act 79, section 145, and 2011 Wisconsin Act (this act), is repealed and recreated
5 to read:

6 938.365 (2g) (b) 3. A statement of whether or not a recommendation has been
7 made to terminate the parental rights of the parents of the juvenile if any of the
8 following applies:

9 a. Subject to subd. 3. b. to d., the juvenile has been placed outside of his or her
10 home in a foster home, group home, nonsecured residential care center for children
11 and youth, or shelter care facility for 15 of the most recent 22 months, not including
12 any period during which the juvenile was a runaway from the out-of-home
13 placement or the first 6 months of any period during which the juvenile was returned
14 to his or her home for a trial home visit.

15 b. The juvenile has been placed outside of his or her home for a cumulative total
16 period of 6 months, not including any period during which the juvenile was a
17 runaway from the out-of-home placement or any period during which the juvenile
18 was returned to his or her home for a trial home visit, and was under 8 years of age
19 when he or she was placed outside of his or her home.

20 c. The juvenile has been placed outside of his or her home for a cumulative total
21 period of 6 months, not including any period during which the juvenile was a
22 runaway from the out-of-home placement or any period during which the juvenile
23 was returned to his or her home for a trial home visit, the juvenile was 8 years of age
24 or over when he or she was placed outside of his or her home, and the goal of the
25 juvenile's permanency plan is placement for adoption with an adoptive parent or a

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1 proposed adoptive parent of a sibling, as defined in s. 938.38 (4) (br) 1., who was
2 under 8 years of age when the sibling was placed outside of his or her home.

3 d. The juvenile has been placed outside of his or her home for a cumulative total
4 period of 6 months, not including any period during which the juvenile was a
5 runaway from the out-of-home placement or any period during which the juvenile
6 was returned to his or her home for a trial home visit, the juvenile was 8 years of age
7 or over when he or she was placed outside of his or her home, and the juvenile's
8 permanency plan indicates that a safe and appropriate placement with a proposed
9 adoptive parent is available for the juvenile and that the juvenile has expressed the
10 wish to be adopted.

11 **SECTION 12.** 938.365 (2g) (b) 3. of the statutes, as affected by 2009 Wisconsin
12 Act 79, section 144, is renumbered 938.365 (2g) (b) 3. (intro.) and amended to read:

13 938.365 (2g) (b) 3. (intro.) ~~If the juvenile has been placed outside of his or her~~
14 ~~home in a foster home, treatment foster home, group home, nonsecured residential~~
15 ~~care center for children and youth, or shelter care facility for 15 of the most recent~~
16 ~~22 months, not including any period during which the juvenile was a runaway from~~
17 ~~the out-of-home placement or the first 6 months of any period during which the~~
18 ~~juvenile was returned to his or her home for a trial home visit, a~~ A statement of
19 whether or not a recommendation has been made to terminate the parental rights
20 of the parents of the juvenile. if any of the following applies:

21 4. If the statement under subd. 3. indicates that a recommendation for a
22 termination of parental rights has been made, ~~the statement shall indicate a~~
23 statement indicating the date on which the recommendation was made, any previous
24 progress made to accomplish the termination of parental rights, any barriers to the
25 termination of parental rights, specific steps to overcome the barriers and when the

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1 steps will be completed, reasons why adoption would be in the best interest of the
2 juvenile and whether or not the juvenile should be registered with the adoption
3 information exchange. If the statement under subd. 3. indicates that a
4 recommendation for termination of parental rights has not been made, the
5 statement shall include an explanation of a statement explaining the reasons why
6 a recommendation for termination of parental rights has not been made. If the lack
7 of appropriate adoptive resources is the primary reason for not recommending a
8 termination of parental rights, the agency shall recommend that the juvenile be
9 registered with the adoption information exchange or report the reason why
10 registering the juvenile is contrary to the best interest of the juvenile.

11 **SECTION 13.** 938.365 (2g) (b) 3. a. to d. of the statutes are created to read:

12 938.365 (2g) (b) 3. a. Subject to subd. 3. b. to d., the juvenile has been placed
13 outside of his or her home for 15 of the most recent 22 months, not including any
14 period during which the juvenile was a runaway from the out-of-home placement
15 or the first 6 months of any period during which the juvenile was returned to his or
16 her home for a trial home visit.

17 b. The juvenile has been placed outside of his or her home for a cumulative total
18 period of 6 months, not including any period during which the juvenile was a
19 runaway from the out-of-home placement or any period during which the juvenile
20 was returned to his or her home for a trial home visit, and was under 8 years of age
21 when he or she was placed outside of his or her home.

22 c. The juvenile has been placed outside of his or her home for a cumulative total
23 period of 6 months, not including any period during which the juvenile was a
24 runaway from the out-of-home placement or any period during which the juvenile
25 was returned to his or her home for a trial home visit, the juvenile was 8 years of age

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1 or over when he or she was placed outside of his or her home, and the goal of the
2 juvenile's permanency plan is placement for adoption with an adoptive parent or a
3 proposed adoptive parent of a sibling, as defined in s. 938.38 (4) (br) 1., who was
4 under 8 years of age when the sibling was placed outside of his or her home.

5 d. The juvenile has been placed outside of his or her home for a cumulative total
6 period of 6 months, not including any period during which the juvenile was a
7 runaway from the out-of-home placement or any period during which the juvenile
8 was returned to his or her home for a trial home visit, the juvenile was 8 years of age
9 or over when he or she was placed outside of his or her home, and the juvenile's
10 permanency plan indicates that a safe and appropriate placement with a proposed
11 adoptive parent is available for the juvenile and that the juvenile has expressed the
12 wish to be adopted.

13 **SECTION 14.** 938.38 (5) (c) 6. (intro.) of the statutes, as affected by 2009
14 Wisconsin Act 79, section 164, is amended to read:

15 938.38 (5) (c) 6. (intro.) If Subject to subd. 6m., if the juvenile has been placed
16 outside of his or her home, as described in s. 938.365 (1), in a foster home, treatment
17 foster home, group home, nonsecured residential care center for children and youth,
18 or shelter care facility for 15 of the most recent 22 months, not including any period
19 during which the juvenile was a runaway from the out-of-home placement or the
20 first 6 months of any period during which the juvenile was returned to his or her
21 home for a trial home visit, the appropriateness of the permanency plan and the
22 circumstances which prevent the juvenile from any of the following:

23 **SECTION 15.** 938.38 (5) (c) 6. (intro.) of the statutes, as affected by 2009
24 Wisconsin Act 79, section 165, and 2011 Wisconsin Act (this act), is repealed and
25 recreated to read:

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1 938.38 (5) (c) 6. (intro.) Subject to subd. 6m., if the juvenile has been placed
2 outside of his or her home, as described in s. 938.365 (1), in a foster home, group
3 home, nonsecured residential care center for children and youth, or shelter care
4 facility for 15 of the most recent 22 months, not including any period during which
5 the juvenile was a runaway from the out-of-home placement or the first 6 months
6 of any period during which the juvenile was returned to his or her home for a trial
7 home visit, the appropriateness of the permanency plan and the circumstances
8 which prevent the juvenile from any of the following:

9 **SECTION 16.** 938.38 (5) (c) 6m. of the statutes is created to read:

10 938.38 (5) (c) 6m. The appropriateness of the permanency plan and the
11 circumstances that prevent the juvenile from being placed for adoption or having a
12 petition for the involuntary termination of parental rights filed on behalf of the
13 juvenile if the juvenile has been placed outside of his or her home, as described in s.
14 938.365 (1), for a cumulative total period of 6 months, not including any period
15 during which the juvenile was a runaway from the out-of-home placement or any
16 period during which the juvenile was returned to his or her home for a trial home
17 visit, and if any of the following applies:

18 a. The juvenile was under 8 years of age when he or she was placed outside of
19 his or her home.

20 b. The juvenile was 8 years of age or over when he or she was placed outside
21 of his or her home and the goal of the juvenile's permanency plan is placement for
22 adoption with an adoptive parent or a proposed adoptive parent of a sibling, as
23 defined in s. 938.38 (4) (br) 1., who was under 8 years of age when the sibling was
24 placed outside of his or her home.

