



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0311/P1  
GMM:kjf:rs

P2  
RMR

JN 12/18

DOA:.....Major, BB0080 – Out-of-home care extension

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

12/23

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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, monthly subsidized guardianship payments may be made to the guardian of a child who has been adjudged to be in need of protection or services if certain additional conditions have been met. In addition, current law permits DCF to provide payments to the adoptive or proposed adoptive parents of a child with special needs to assist in the cost of care of the child when DCF determines that those payments are necessary to assure the child's adoption (adoption assistance). Subject to certain exceptions, subsidized guardianship payments and adoption assistance end when the child attains 18 years of age.

This bill permits subsidized guardianship payments to be made or adoption assistance to be provided until a child attains 21 years of age if the child is a full-time student at a secondary school or its vocational or technical equivalent (full-time student), an individualized education program (IEP) is in effect for the child, and the subsidized guardianship agreement or adoption assistance agreement for the child became effective on or after the date on which the child attained 16 years of age. (An IEP is a written statement for a child with a disability developed by an IEP team appointed by the child's local educational agency that includes, among other things, the child's level of academic achievement and functional performance, measurable goals for the child, the special education and related services to be provided to the child, and how the child's progress toward attaining those goals will be measured.)

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*and who are placed in the facility under a juvenile court order*

Under current law, a permanency plan must be prepared for a child who is placed outside the home under an ~~order of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code~~ *juvenile court* or under a voluntary agreement. (A permanency plan is a plan designed to ensure that a child who is placed outside the home is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing long-term stability.)

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This bill requires a permanency plan to be prepared for a child who is placed outside the home under a voluntary transition-to-independent-living agreement, which is an agreement under which a child with an IEP who is a full-time student may continue in out-of-home care and receive services to assist him or her in transitioning to independent living until the child attains 21 years of age, is granted a high school or high school equivalency diploma, or terminates the agreement, *and maintenance* whichever occurs first.

any of the following

Under current law, subject to certain exceptions, a facility where five or more adults who do not require care above intermediate level nursing care reside and receive care, treatment, or services that are above the level of room and board must be licensed as a community-based residential facility (CBRF). This bill provides that a facility licensed as a foster home, group home, or residential care center for children and youth (facility) that provides care, treatment, or services for a person 18 years of age or over ~~(adult)~~ is not required to also be licensed as a CBRF if the only adults for whom the facility provides care, treatment, or services are any of the following:

1. Persons under 19 years of age who are full-time students *and* who are reasonably expected to complete their program before attaining 19 years of age.
2. Persons under 19 years of age who are placed in the facility under an order of the juvenile court entered before attaining 18 years of age until a date that is one year or less after the date on which the order was entered.
3. Persons under 21 years of age who are full-time students *and* for whom an IEP is in effect.
4. Persons under 21 years of age who are placed in the facility under the placement and care responsibility of another state.

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

Insert  
2-1

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

1 SECTION 1. 48.38 (1) (ad) of the statutes is created to read:  
 2 48.38 (1) (ad) "Child" includes a person 18 years of age or over for whom a  
 3 permanency plan is required under sub. (2).

4 SECTION 2. 48.38 (2) (d) of the statutes is amended to read:

*and who are placed in the facility under a juvenile court order or under a voluntary transition-to-independent-living agreement*

1           48.38 (2) (d) The child was placed under a voluntary agreement between the  
2 agency and the child’s parent under s. 48.63 (1) (a) or (5) (b) or under a voluntary  
3 transition-to-independent-living agreement under s. 48.366 (3).

4           **SECTION 3.** 48.38 (5) (c) 9. of the statutes is amended to read:

5           48.38 (5) (c) 9. If the child is the subject of an order that terminates as provided  
6 in s. 48.355 (4) (b) 4., 48.357 (6) (a) 4. or 48.365 (5) (b) 4. or of a voluntary  
7 transition-to-independent-living agreement under s. 48.366 (3), the  
8 appropriateness of the transition-to-independent-living plan developed under s.  
9 48.385; the extent of compliance with that plan by the child, the child’s guardian, if  
10 any, the agency primarily responsible for providing services under that plan, and any  
11 other service providers; and the progress of the child toward making the transition  
12 to independent living.

13           **SECTION 4.** 48.385 of the statutes is amended to read:

14           **48.385 Plan for transition to independent living.** During the 90 days  
15 immediately before a child who is placed in a foster home, group home, or residential  
16 care center for children and youth, in the home of a relative other than a parent, or  
17 in a supervised independent living arrangement attains 18 years of age or, if the child  
18 is placed in such a placement under an order under s. 48.355, 48.357, or 48.365 that  
19 terminates under s. 48.355 (4) (b) after the child attains 18 years of age or under a  
20 voluntary transition-to-independent-living agreement under s. 48.366 (3) that  
21 terminates under s. 48.366 (3) (a) after the child attains 18 years of age, during the  
22 90 days immediately before the termination of the order or agreement, the agency  
23 primarily responsible for providing services to the child under the order or  
24 agreement shall provide the child with assistance and support in developing a plan  
25 for making the transition from out-of-home care to independent living. The

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1 transition plan shall be personalized at the direction of the child, shall be as detailed  
2 as the child directs, and shall include specific options for obtaining housing, health  
3 care, education, mentoring and continuing support services, and workforce support  
4 and employment services.

5 SECTION 5. 48.599 (1) of the statutes is renumbered 48.599 (1r).

6 SECTION 6. 48.599 (1g) of the statutes is created to read:

7 48.599 (1g) "Child" means a person under 18 years of age. For purposes of the  
8 authority to provide care and maintenance for a child placed in a residential care  
9 center for children and youth operated by a child welfare agency and of counting the  
10 number of children for whom a child welfare agency may provide such care and  
11 maintenance, "child" also includes a person 18 years of age or over who resides in a  
12 residential care center for children and youth operated by a child welfare agency, if  
13 any of the following applies:

14 (a) The person is under 19 years of age, is a full-time student at a secondary  
15 school or its vocational or technical equivalent, and is reasonably expected to  
16 complete the program before attaining 19 years of age. Insert 4-16

17 (b) The person is under 19 years of age and an order under s. 48.355, 48.357,  
18 48.365, 938.355, 938.357, or 938.365 entered before the person attained 18 years of  
19 age places or continues the placement of the person in a residential care center for  
20 children and youth until a date that is one year or less after the date on which the  
21 order was entered.

22 (c) The person is under 21 years of age, is a full-time student at a secondary  
23 school or its vocational or technical equivalent, and an individualized education  
24 program under s. 115.787 is in effect for the person. Insert 4-24

1 (d) The person is under 21 years of age and is placed in a residential care center  
2 for children and youth under the placement and care responsibility of another state  
3 under 42 USC 675 (8) (B) (iv).

4 SECTION 7. 48.619 (intro.) of the statutes is amended to read:

5 48.619 Definition. (intro.) In this subchapter, "child" means a person under  
6 18 years of age. For purposes of the authority to provide care and maintenance for  
7 a child and of counting the number of children for whom a foster home or group home  
8 may provide care and maintenance, "child" also includes a person 18 years of age or  
9 over who resides in the foster home or group home, if any of the following applies:

10 SECTION 8. 48.619 (1) of the statutes is amended to read:

11 48.619 (1) The person is under 19 years of age, is a full-time student at a  
12 secondary school or its vocational or technical equivalent <sup>stay?</sup> and is reasonably expected  
13 to complete the program before ~~reaching~~ attaining 19 years of age. Insert 5-13

14 SECTION 9. 48.619 (1m) of the statutes is created to read:

15 48.619 (1m) The person is under 19 years of age and an order under s. 48.355,  
16 48.357, 48.365, 938.355, 938.357, or 938.365 entered before the person attained 18  
17 years of age places or continues the placement of the person in a foster home or group  
18 home until a date that is one year or less after the date on which the order was  
19 entered.

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20 SECTION 10. 48.619 (3) of the statutes is created to read:

21 48.619 (3) The person is under 21 years of age and is placed in a foster home  
22 or group home under the placement and care responsibility of another state under  
23 42 USC 675 (8) (B) (iv).

24 SECTION 11. 48.623 (1m) of the statutes is created to read:

1           48.623 (1m) DURATION OF ELIGIBILITY. Subsidized guardianship payments  
2 under sub. (1) or (6) may be continued after the child attains 18 years of age if any  
3 of the following applies:

4           (a) The child is under 19 years of age, is a full-time student at a secondary  
5 school or its vocational or technical equivalent, and is reasonably expected to  
6 complete the program before reaching 19 years of age.

7           (b) The child is under 21 years of age, is a full-time student at a secondary  
8 school or its vocational or technical equivalent, has a physical, emotional, or  
9 behavioral need that warrants the continuation of those payments as determined by  
10 the county department or, in a county having a population of 750,000 or more, the  
11 department, and is not eligible for social security disability insurance under 42 USC  
12 401 to 433 or supplemental security income under 42 USC 1381 to 1385.

13           (c) The child is under 21 years of age, is a full-time student at a secondary  
14 school or its vocational or technical equivalent, an individualized education program  
15 under s. 115.787 is in effect for the child, and the subsidized guardianship agreement  
16 for the child became effective on or after the date on which the child attained 16 years  
17 of age.

18           **SECTION 12.** 48.975 (3m) of the statutes is renumbered 48.975 (3m) (intro.) and  
19 amended to read:

20           48.975 (3m) DURATION. (intro.) The adoption assistance may be continued after  
21 the adoptee reaches the age of 18 if that adoptee is a full-time high school student.  
22 attains 18 years of age if any of the following applies:

23           **SECTION 13.** 48.975 (3m) (a), (b) and (c) of the statutes are created to read:

1           48.975 (3m) (a) The adoptee is under 19 years of age, is a full-time student at  
2 a secondary school or its vocational or technical equivalent, and is reasonably  
3 expected to complete the program before reaching 19 years of age.

4           (b) The adoptee is under 21 years of age, is a full-time student at a secondary  
5 school or its vocational or technical equivalent, has a mental or physical disability  
6 that warrants the continuation of adoption assistance as determined by the  
7 department, is not eligible for other benefits, and otherwise lacks adequate resources  
8 to continue in secondary school or its vocational or technical equivalent.

9           (c) The adoptee is under 21 years of age, is a full-time student at a secondary  
10 school or its vocational or technical equivalent, an individualized education program  
11 under s. 115.787 is in effect for the adoptee, and the adoption assistance agreement  
12 for the adoptee became effective on or after the date on which the adoptee attained  
13 16 years of age.

14           **SECTION 14.** 50.01 (1g) (i) of the statutes is created to read:

15           50.01 (1g) (i) A facility licensed as a foster home, group home, or residential  
16 care center for children and youth that provides care, ~~treatment, or services~~ for  
17 adults, ~~if the only adults for whom the facility provides care, treatment, or services~~  
18 ~~are the persons specified in s. 48.599 (1g) (a) to (d) or 48.619 (1) to (3).~~

19           **SECTION 15.** 938.38 (1) (ap) of the statutes is created to read:

20           938.38 (1) (ap) “Juvenile” includes a person 17 years of age or over for whom  
21 a permanency plan is required under sub. (2).

22           **SECTION 16.** 938.38 (2) (d) of the statutes is amended to read:

23           938.38 (2) (d) The juvenile was placed under a voluntary agreement between  
24 the agency and the juvenile’s parent under s. 48.63 (1) (a) or (5) (b) or under a  
25 voluntary transition-to-independent-living agreement under s. 938.366 (3).

and maintenance.

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**2015-2016 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0311/P2ins  
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(INSERT 2-1)

1           **SECTION 1.** 48.366 (1) of the statutes is renumbered 48.366 (1) (intro.) and  
2 amended to read:

3           48.366 (1) (intro.) **APPLICABILITY.** This section applies to a person who is a  
4 full-time student of a secondary school or its vocational or technical equivalent, for  
5 whom an individualized education program under s. 115.787 is in effect, and to whom  
6 any of the following applies:

7           (a) The person is placed in a foster home, group home, or residential care center  
8 for children and youth, in the home of a relative other than a parent, or in a  
9 supervised independent living arrangement under an order under s. 48.355, 48.357,  
10 or 48.365 that terminates as provided in s. 48.355 (4) (b) 1., 2., or 3., 48.357 (6) (a) 1.,  
11 2., or 3., or 48.365 (5) (b) 1., 2., or 3. on or after the person attains 18 years of age or  
12 who.

13           (b) The person is in the guardianship and custody of an agency specified in s.  
14 48.427 (3m) (a) 1. to 4. or (am) under an order under s. 48.43, ~~who is a full-time~~  
15 ~~student of a secondary school or its vocational or technical equivalent, and for whom~~  
16 ~~an individualized education program under s. 115.787 is in effect.~~

17 History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

17           **SECTION 2.** 48.366 (1) (c) of the statutes is created to read:

18           48.366 (1) (c) The person is placed in a shelter care facility on the date on which  
19 an order specified in par. (a) or (b) terminates.

20           **SECTION 3.** 48.366 (2) (a) of the statutes is amended to read:

21           48.366 (2) (a) Not less than 120 days before an order described in sub. (1) (a)  
22 or (b) terminates, the agency primarily responsible for providing services under the  
23 order shall request the person who is the subject of the order to indicate whether he



1 or she wishes to be discharged from out-of-home care on termination of the order or  
 2 wishes to continue in out-of-home care under a voluntary agreement under sub. (3).  
 3 If the person is subject to an order under s. 48.355, 48.357, or 48.365 described in sub.  
 4 (1) (a), the agency shall also request the person to indicate whether he or she wishes  
 5 to continue in out-of-home care until the date specified in s. 48.365 (5) (b) 4. under  
 6 an extension of the order. If the person indicates that he or she wishes to be  
 7 discharged from out-of-home care on termination of the order, the agency shall  
 8 request a transition-to-discharge hearing under par. (b). If the person indicates that  
 9 he or she wishes to continue in out-of-home care under an extension of an order  
 10 under s. 48.355, 48.357, or 48.365 described in sub. (1) (a), the agency shall request  
 11 an extension of the order under s. 48.365. If the person indicates that he or she  
 12 wishes to continue in out-of-home care under a voluntary agreement under sub. (3),  
 13 the agency and the person shall enter into such an agreement.

History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

14 **SECTION 4.** 48.366 (2) (b) 1. of the statutes is amended to read:

15 48.366 (2) (b) 1. If the person who is the subject of an order described in sub.  
 16 (1) (a) or (b) indicates that he or she wishes to be discharged from out-of-home care  
 17 on termination of the order, the agency primarily responsible for providing services  
 18 to the person under the order shall request the court to hold a  
 19 transition-to-discharge hearing and shall cause notice of that request to be provided  
 20 to that person, the parent, guardian, and legal custodian of that person, any foster  
 21 parent or other physical custodian described in s. 48.62 (2) of that person, that  
 22 person's court-appointed special advocate, all parties who are bound by the  
 23 dispositional order, and, if that person is an Indian child who has been removed from

1 the home of his or her parent or Indian custodian, that person's Indian custodian and  
2 tribe.

3 **History:** 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

**SECTION 5.** 48.366 (2) (b) 3. of the statutes is amended to read:

4 48.366 (2) (b) 3. At the hearing the court shall review with the person who is  
5 the subject of an order described in sub. (1) (a) or (b) the options specified in par. (a)  
6 and. If the person is subject to an order under s. 48.355, 48.357, or 48.365 described  
7 in sub. (1) (a), the court shall also advise the person that he or she may continue in  
8 out-of-home care as provided in par. (a) under an extension of an order under s.  
9 48.355, 48.357, or 48.365 described in sub. (1) (a) or under a voluntary agreement  
10 under sub. (3).

11 **History:** 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

**SECTION 6.** 48.366 (2) (b) 4. of the statutes is amended to read:

12 48.366 (2) (b) 4. If the court determines that the person who is the subject of  
13 an order described in sub. (1) (a) or (b) understands that he or she may continue in  
14 out-of-home care, but wishes to be discharged from that care on termination of the  
15 order, the court shall advise the person that he or she may enter into a voluntary  
16 agreement under sub. (3) at any time before he or she is granted a high school or high  
17 school equivalency diploma or reaches 21 years of age, whichever occurs first, so long  
18 as he or she is a full-time student at a secondary school or its vocational or technical  
19 equivalent and an individualized education program under s. 115.787 is in effect for  
20 him or her. If the court determines that the person wishes to continue in  
21 out-of-home care under an extension of an order under s. 48.355, 48.357, or 48.365  
22 described in sub. (1) (a), the court shall schedule an extension hearing under s.  
23 48.365. If the court determines that the person wishes to continue in out-of-home  
24 care under a voluntary agreement under sub. (3), the court shall order the agency

1 primarily responsible for providing services to the person under the order to provide  
2 transition-to-independent-living services for the person under a voluntary  
3 agreement under sub. (3).

History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

4 **SECTION 7.** 48.366 (3) (a) of the statutes is amended to read:

5 48.366 (3) (a) On termination of an order described in sub. (1) (a) or (b), the  
6 person who is the subject of the order, or the person's guardian on behalf of the  
7 person, and the agency primarily responsible for providing services to the person  
8 under the order may enter into a transition-to-independent-living agreement  
9 under which the person continues in out-of-home care and continues to be a  
10 full-time student at a secondary school or its vocational or technical equivalent  
11 under an individualized education program under s. 115.787 until the date on which  
12 the person reaches 21 years of age, is granted a high school or high school equivalency  
13 diploma, or terminates the agreement as provided in par. (b), whichever occurs first,  
14 and the agency provides services to the person to assist him or her in transitioning  
15 to independent living.

History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

16 **SECTION 8.** 48.366 (3) (d) of the statutes is created to read:

17 48.366 (3) (d) If the agency that enters into a voluntary agreement under this  
18 subsection is the department or a county department, the voluntary agreement shall  
19 also specifically state that the department or county department has placement and  
20 care responsibility for the person who is the subject of the agreement as required  
21 under 42 USC 672 (a) (2) and has primary responsibility for providing services to the  
22 person.

23 **SECTION 9.** 48.366 (3g) of the statutes is created to read:

1           48.366 (3g) APPEAL PROCEDURES. (a) Except as provided in par. (b), any person  
 2 who is aggrieved by the failure of an agency to enter into a  
 3 transition-to-independent-living agreement under sub. (3), to provide any services  
 4 specified in such an agreement, or to perform any other action required of the agency  
 5 under this section has the right to a contested case hearing under ch. 227.

6           (b) If the agency specified in par. (a) is a county department, a person who is  
 7 aggrieved as provided in par. (a) may obtain a review of the county department's  
 8 action or inaction under ch. 68.

9           **SECTION 10.** 48.366 (4) (a) of the statutes is amended to read:

10           48.366 (4) (a) Rules permitting a foster home, group home, or residential care  
 11 center for children and youth to provide care for persons who agree to continue in  
 12 out-of-home care under an extension of an order described in sub. (1) (a) or a  
 13 voluntary agreement under sub. (3).

14 History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16; 2005 a. 344; 2013 a. 334.

14           **SECTION 11.** 48.366 (4) (c) of the statutes is created to read:

15           48.366 (4) (c) Rules governing the provision of kinship care payments or  
 16 long-term kinship care payments under s. 48.57 (3m) or (3n), subsidized  
 17 guardianship payments under s. 48.623, and adoption assistance under s. 48.975 for  
 18 the care of a person who agrees to continue in out-of-home care under an extension  
 19 of an order described in sub. (1) or a voluntary agreement under sub. (3).

(END OF INSERT)

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20           **SECTION 12.** 48.57 (3m) (a) 1. of the statutes is renumbered 48.57 (3m) (a) 1.  
 21 (intro.) and amended to read:

1 48.57 (3m) (a) 1. (intro.) "Child" means a person under 18 years of age; "Child"  
2 also includes a person 18 years of age or over, but if any of the following applies:

3 a. The person is under 19 years of age, who is a full-time student in good  
4 academic standing at a secondary school or its vocational or technical equivalent,  
5 and who is reasonably expected to complete his or her program of study and be  
6 granted a high school or high school equivalency diploma; or a person 18 years of age  
7 or over, but,

8 b. The person is under 21 years of age, who is a full-time student in good  
9 academic standing at a secondary school or its vocational or technical equivalent if,  
10 an individualized education program under s. 115.787 is in effect for the person, and  
11 the person is placed in the home of the kinship care relative under an order under  
12 s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365 that terminates under s.  
13 48.355 (4) (b) or 938.355 (4) (am) after the person attains 18 years of age or under a  
14 voluntary transition-to-independent-living agreement under s. 48.366 (3) or  
15 938.366 (3).

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109; 2005 a. 25, 232, 293; 2007 a. 20; 2009 a. 28, 71, 94, 180; 2011 a. 32; 2013 a. 20, 334, 335, 362.

16 **SECTION 13.** 48.57 (3m) (b) 1. of the statutes is amended to read:

17 48.57 (3m) (b) 1. The county department or, in a county having a population  
18 of 500,000 or more, the department shall refer to the attorney responsible for support  
19 enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for  
20 whom a payment is made under par. (am). This subdivision does not apply to a  
21 person 18 years of age or over for whom a payment is made under par. (am).

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109; 2005 a. 25, 232, 293; 2007 a. 20; 2009 a. 28, 71, 94, 180; 2011 a. 32; 2013 a. 20, 334, 335, 362.

22 **SECTION 14.** 48.57 (3n) (a) 1. of the statutes is renumbered 48.57 (3n) (a) 1.

23 (intro.) and amended to read:

(into.)

1

48.57 (3n) (a) 1. "Child" means a person under 18 years of age; "Child" also

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includes a person 18 years of age or over, but if any of the following applies:

3

a. The person is under 19 years of age, who is a full-time student in good

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academic standing at a secondary school or its vocational or technical equivalent,

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and who is reasonably expected to complete his or her program of study and be

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granted a high school or high school equivalency diploma; or a person 18 years of age

7

or over, but,

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b. The person is under 21 years of age, who is a full-time student in good

9

academic standing at a secondary school or its vocational or technical equivalent if,

10

an individualized education program under s. 115.787 is in effect for the person, and

11

the person is placed in the home of the long-term kinship care relative under an

12

order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365 that terminates

13

under s. 48.355 (4) (b) or 938.355 (4) (am) after the person attains 18 years of age or

14

under a voluntary transition-to-independent-living agreement under s. 48.366 (3)

15

or 938.366 (3).

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109; 2005 a. 25, 232, 293; 2007 a. 20; 2009 a. 28, 71, 94, 180; 2011 a. 32; 2013 a. 20, 334, 335, 362.

16

**SECTION 15.** 48.57 (3n) (b) 1. of the statutes is amended to read:

17

48.57 (3n) (b) 1. The county department or, in a county having a population of

18

500,000 or more, the department shall refer to the attorney responsible for support

19

enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for

20

whom a payment is made under par. (am). This subdivision does not apply to a

21

person 18 years of age or over for whom a payment is made under par. (am).

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109; 2005 a. 25, 232, 293; 2007 a. 20; 2009 a. 28, 71, 94, 180; 2011 a. 32; 2013 a. 20, 334, 335, 362.

(END OF INSERT)

(INSERT 4-16)

1 , and is placed in the residential care center for children and youth under an  
2 order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365 that terminates  
3 under s. 48.355 (4) (b) or 938.355 (4) (am) after the person attains 18 years of age

(END OF INSERT)

(INSERT 4-24)

4 , and the person is placed in the residential care center for children and youth  
5 under an order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365 that  
6 terminates under s. 48.355 (4) (b) or 938.355 (4) (am) after the person attains 18 years  
7 of age or under a voluntary transition-to-independent-living agreement under s.  
8 48.366 (3) or 938.366 (3)

(END OF INSERT)

(INSERT 5-13)

9 , and is placed in the foster home or group home under an order under s. 48.355,  
10 48.357, 48.365, 938.355, 938.357, or 938.365 that terminates under s. 48.355 (4) (b)  
11 or 938.355 (4) (am) after the person attains 18 years of age

(END OF INSERT)

(INSERT 5-19)

12 **SECTION 16.** 48.619 (2) of the statutes is amended to read:

13 48.619 (2) The person is under 21 years of age, is a full-time student at a  
14 secondary school or its vocational or technical equivalent, and an individualized  
15 education program under s. 115.787 is in effect for the person, and the person is  
16 placed in the foster home or group home under an order under s. 48.355, 48.357,  
17 48.365, 938.355, 938.357, or 938.365 that terminates under s. 48.355 (4) (b) or

1 938.355 (4) (am) after the person attains 18 years of age or under a voluntary  
2 transition-to-independent-living agreement under s. 48.366 (3) or 938.366 (3).

History: 2001 a. 69; 2009 a. 28; 2013 a. 334.

(END OF INSERT)

(INSERT 7-18)

3 **SECTION 17.** 938.366 (1) of the statutes is renumbered 938.366 (1) (intro.) and  
4 amended to read:

5 938.366 (1) (intro.) **APPLICABILITY.** This section applies to a person who is a  
6 full-time student of a secondary school or its vocational or technical equivalent, for  
7 whom an individualized education program under s. 115.787 is in effect, and to whom  
8 any of the following applies:

9 (a) The person is placed in a foster home, group home, or residential care center  
10 for children and youth, in the home of a relative other than a parent, or in a  
11 supervised independent living arrangement under an order under s. 938.355,  
12 938.357, or 938.365 that terminates as provided in s. 938.355 (4) (am) 1., 2., or 3.,  
13 938.357 (6) (a) 1., 2., or 3., or 938.365 (5) (b) 1., 2., or 3. on or after the person attains  
14 18 years of age, ~~who is a full-time student of a secondary school or its vocational or~~  
15 ~~technical equivalent, and for whom an individualized education program under s.~~  
16 ~~115.787 is in effect.~~

History: 2013 a. 334.

17 **SECTION 18.** 938.366 (1) (b) of the statutes is created to read:

18 938.366 (1) (b) The person is placed in a shelter care facility on the date on  
19 which an order specified in par. (a) terminates.

20 **SECTION 19.** 938.366 (2) (a) of the statutes is amended to read:

21 938.366 (2) (a) Not less than 120 days before an order described in sub. (1) (a)  
22 terminates, the agency primarily responsible for providing services under the order



1 shall request the person who is the subject of the order to indicate whether he or she  
2 wishes to be discharged from out-of-home care on termination of the order, wishes  
3 to continue in out-of-home care until the date specified in s. 938.365 (5) (b) 4. under  
4 an extension of the order, or wishes to continue in out-of-home care under a  
5 voluntary agreement under sub. (3). If the person indicates that he or she wishes to  
6 be discharged from out-of-home care on termination of the order, the agency shall  
7 request a transition-to-discharge hearing under par. (b). If the person indicates that  
8 he or she wishes to continue in out-of-home care under an extension of the order, the  
9 agency shall request an extension of the order under s. 938.365. If the person  
10 indicates that he or she wishes to continue in out-of-home care under a voluntary  
11 agreement under sub. (3), the agency and the person shall enter into such an  
12 agreement.

History: 2013 a. 334.

13 **SECTION 20.** 938.366 (2) (b) 1. of the statutes is amended to read:

14 938.366 (2) (b) 1. If the person who is the subject of an order described in sub.  
15 (1) (a) indicates that he or she wishes to be discharged from out-of-home care on  
16 termination of the order, the agency primarily responsible for providing services to  
17 the person under the order shall request the court to hold a transition-to-discharge  
18 hearing and shall cause notice of that request to be provided to that person, the  
19 parent, guardian, and legal custodian of that person, any foster parent or other  
20 physical custodian described in s. 48.62 (2) of that person, all parties who are bound  
21 by the dispositional order, and, if that person is an Indian juvenile who has been  
22 removed from the home of his or her parent or Indian custodian, that person's Indian  
23 custodian and tribe.

History: 2013 a. 334.

24 **SECTION 21.** 938.366 (2) (b) 3. of the statutes is amended to read:

1           938.366 (2) (b) 3. At the hearing the court shall review with the person who is  
 2 the subject of an order described in sub. (1) (a) the options specified in par. (a) and  
 3 shall advise the person that he or she may continue in out-of-home care as provided  
 4 in par. (a) under an extension of the order or under a voluntary agreement under sub.  
 5 (3).

History: 2013 a. 334.

6           **SECTION 22.** 938.366 (2) (b) 4. of the statutes is amended to read:

7           938.366 (2) (b) 4. If the court determines that the person who is the subject of  
 8 an order described in sub. (1) (a) understands that he or she may continue in  
 9 out-of-home care, but wishes to be discharged from that care on termination of the  
 10 order, the court shall advise the person that he or she may enter into a voluntary  
 11 agreement under sub. (3) at any time before he or she is granted a high school or high  
 12 school equivalency diploma or reaches 21 years of age, whichever occurs first, so long  
 13 as he or she is a full-time student at a secondary school or its vocational or technical  
 14 equivalent and an individualized education program under s. 115.787 is in effect for  
 15 him or her. If the court determines that the person wishes to continue in  
 16 out-of-home care under an extension of the order described in sub. (1) (a), the court  
 17 shall schedule an extension hearing under s. 938.365. If the court determines that  
 18 the person wishes to continue in out-of-home care under a voluntary agreement  
 19 under sub. (3), the court shall order the agency primarily responsible for providing  
 20 services to the person under the order to provide transition-to-independent-living  
 21 services for the person under a voluntary agreement under sub. (3).

History: 2013 a. 334.

22           **SECTION 23.** 938.366 (3) (a) of the statutes is amended to read:

23           938.366 (3) (a) On termination of an order described in sub. (1) (a), the person  
 24 who is the subject of the order, or the person's guardian on behalf of the person, and

1 the agency primarily responsible for providing services to the person under the order  
2 may enter into a transition-to-independent-living agreement under which the  
3 person continues in out-of-home care and continues to be a full-time student at a  
4 secondary school or its vocational or technical equivalent under an individualized  
5 education program under s. 115.787 until the date on which the person reaches 21  
6 years of age, is granted a high school or high school equivalency diploma, or  
7 terminates the agreement as provided in par. (b), whichever occurs first, and the  
8 agency provides services to the person to assist him or her in transitioning to  
9 independent living.

History: 2013 a. 334.

10 **SECTION 24.** 938.366 (3) (d) of the statutes is created to read:

11 938.366 (3) (d) If the agency that enters into a voluntary agreement under this  
12 subsection is a county department, the voluntary agreement shall also specifically  
13 state that the county department has placement and care responsibility for the  
14 person who is the subject of the agreement as required under 42 USC 672 (a) (2) and  
15 has primary responsibility for providing services to the person.

16 **SECTION 25.** 938.366 (3g) of the statutes is created to read:

17 938.366 (3g) APPEAL PROCEDURES. (a) Except as provided in par. (b), any person  
18 who is aggrieved by the failure of an agency to enter into a  
19 transition-to-independent-living agreement under sub. (3), to provide any services  
20 specified in such an agreement, or to perform any other action required of the agency  
21 under this section has the right to a contested case hearing under ch. 227.

22 (b) If the agency specified in par. (a) is a county department, a person who is  
23 aggrieved as provided in par. (a) may obtain a review of the county department's  
24 action or inaction under ch. 68.

1           **SECTION 26.** 938.366 (4) (a) of the statutes is amended to read:

2           938.366 (4) (a) Rules permitting a foster home, group home, or residential care  
3 center for children and youth to provide care for persons who agree to continue in  
4 out-of-home care under an extension of an order described in sub. (1) (a) or a  
5 voluntary agreement under sub. (3).

6 History: 2013 a. 334.

6           **SECTION 27.** 938.366 (4) (c) of the statutes is created to read:

7           938.366 (4) (c) Rules governing the provision of kinship care payments or  
8 long-term kinship care payments under s. 48.57 (3m) or (3n), subsidized  
9 guardianship payments under s. 48.623, and adoption assistance under s. 48.975 for  
10 the care of a person who agrees to continue in out-of-home care under an extension  
11 of an order described in sub. (1) or a voluntary agreement under sub. (3).

(END OF INSERT)

(INSERT A-1)

Under current law, monthly kinship care payments may be made to a relative of a child (kinship care relative) who is providing care and maintenance for the child if certain additional conditions have been met. Kinship care payments generally end when the child attains 18 years of age, except under certain exceptions including an exception under which kinship care payments may be made until a child attains 21 years of age if the child is a full-time student and an IEP is in effect for the child.

This bill, in addition, requires, as a condition for eligibility for kinship care payments for a child under 21 years of age who is a full-time student and for whom an IEP is in effect, that the child be placed in the home of the kinship care relative under an order of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) or under a voluntary transition-to-independent-living agreement, which is an agreement under which such a child may continue in out-of-home care and receive services to assist him or her in transitioning to independent living until the child attains 21 years of age, is granted a high school or high school equivalency diploma, or terminates the agreement, whichever occurs first.

(END OF INSERT)

(INSERT A-2)

no

The bill also, with respect to voluntary transition-to-independent-living agreements: 1) provides that if DCF or a county enters into such an agreement with a child, the agreement must specifically state that DCF or the county has placement and care responsibility for the child and has primary responsibility for providing services to the child; 2) creates an appeal procedure under which any person who is aggrieved by the failure of an agency to enter into such an agreement, to provide any services specified in such an agreement, or to perform any other action required of the agency has the right to a contested case hearing under the state administrative procedures laws or, if the agency is a county, under the municipal administrative procedures laws; and 3) requires DCF to promulgate rules governing the provision of subsidized guardianship payments, kinship care payments, and adoption assistance for a child who agrees to continue in out-of-home care under such an agreement.

(END OF INSERT)

1           **SECTION 17.** 938.38 (5) (c) 9. of the statutes is amended to read:

2           938.38 (5) (c) 9. If the juvenile is the subject of an order that terminates as  
3 provided in s. 938.355 (4) (am) 4., 938.357 (6) (a) 4., or 938.365 (5) (b) 4. or of a  
4 voluntary transition-to-independent-living agreement under s. 938.366 (3), the  
5 appropriateness of the transition-to-independent-living plan developed under s.  
6 938.385; the extent of compliance with that plan by the juvenile, the juvenile's  
7 guardian, if any, the agency primarily responsible for providing services under that  
8 plan, and any other service providers; and the progress of the juvenile toward  
9 making the transition to independent living.

10           **SECTION 18.** 938.385 of the statutes is amended to read:

11           **938.385 Plan for transition to independent living.** During the 90 days  
12 immediately before a juvenile who is placed in a foster home, group home, or  
13 residential care center for children and youth, in the home of a relative other than  
14 a parent, or in a supervised independent living arrangement attains 18 years of age  
15 or, if the juvenile is placed in such a placement under an order under s. 938.355,  
16 938.357, or 938.365 that terminates under s. 938.355 (4) (am) after the juvenile  
17 attains 18 years of age or under a voluntary transition-to-independent-living  
18 agreement under s. 938.366 (3) that terminates under s. 938.366 (3) (a) after the  
19 juvenile attains 18 years of age, during the 90 days immediately before the  
20 termination of the order or agreement, the agency primarily responsible for  
21 providing services to the juvenile under the order or agreement shall provide the  
22 juvenile with assistance and support in developing a plan for making the transition  
23 from out-of-home care to independent living. The transition plan shall be  
24 personalized at the direction of the juvenile, shall be as detailed as the juvenile  
25 directs, and shall include specific options for obtaining housing, health care,

1 education, mentoring and continuing support services, and workforce support and  
2 employment services.

3 (END)

## Malaise, Gordon

---

**From:** Major, Katrina L - DOA <Katrina.Major@wisconsin.gov>  
**Sent:** Friday, January 16, 2015 4:00 PM  
**To:** Malaise, Gordon  
**Cc:** Kraus, Jennifer - DOA  
**Subject:** FW: Extended Out of Home Care Legislation  
**Attachments:** Comments on LRB0311\_P2 FINAL.docx

Hi Gordon, would you please incorporate DCF's requested revisions (attached) to the out-of-home care extension draft? Let me know if you have questions/concerns on any of it. Thanks! k



Comments on LRB-0311/P2

Foster Care Extension Budget Bill

Requested modifications that were not drafted:

1. Permanency Planning:
  - a. Strike out 48.38(4)(fg)(6)
  - b. Modify 48.38(4)(fg)(5) as follows: strike out "...long term foster care, but not independent living" and replace with "... transition to independence."
2. Court Process:
  - a. Specify that the Best Interest to be in care determination must be made at (180 Days) ~~and every 180 days thereafter~~ for youth on a voluntary
  - b. Permanency hearings can be held by a court or by an administrative body appointed or approved by the court for this population. *Current law*
  - c. We need another provision in 48.38 – appox. p 8-9 for 180 judicial best interest finding for VTILAs. If the child is the subject of a VTILA under 48.366(3) it appears from federal guidance that we should have a judicial finding that placement is in the child's best interest within 180 days of the VTILA. See P. 7 of ACYF- CB-PI- 10-11.

Same

Additional changes:

3. Section 9: 48.366(3g)(b): It is not necessary to have a specified ch. 68 appeal of agency decisions. The process specified in the rule designates DCF as the final decision maker. Additionally, Appeal rights should only be for agency denial of a youth's request to re-enter out of home care or an agency termination of the VTILA as in DCF 21.08. Add appeal rights for termination of a VTILA. Take out language giving appeal rights for an agency failing to provide services under a TILA or to take actions under 48.366. We don't want there to be appeal rights for failure to provide any services specified in the agreement or to perform any other action required under 48.366 – we don't currently allow any foster care youth under 18 – whether under a court order or a VPA - to appeal to DHA for a lack of services or agency action.
4. 48.599 p. 11 and 48.619 p. 13 – The definition of child in the current draft was taken out of our permanent rule so should not be in the statute either. Change the statutory definitions in the draft to define child for purposes of authority to provide care and maintenance for a child in a residential care center for children and youth (48.599) and for purposes of authority to provide care and maintenance for a child in a foster home or group home (48.619) and for counting to be a person under age 18 or a person under age 21 who is residing or placed in the facility pursuant to authority under ch. 48 or 938
5. 48.366(3)(d) p. 6 – Consistent with 48.63(1) this should also reference the department of corrections not just DCF or the county department having placement and care responsibility.
6. 48.366(4)(c) p. 7 – Change rulemaking authority to allow rulemaking re: for KC, SG and AA over the age of 18, not just for youth in extended OHC. Our current admin. rules address when SG or

(VU)-AM  
938.366(3D)  
DNOTE

AA payments can continue over age 18 (e.g., AA to 19 if in HS or possibly to 21 if there is a disability) but there is no specific statutory authority for these rules for over age 18. So if we are going to add express rulemaking authority for kids in extended foster care over 18 we should also add similar rulemaking authority for other kids over 18.

7. 48.623(1m)(b) p. 13 –Re – Subsidized guardianship - This should reference the type of SSA denial that is required in a way that is consistent with our practice and interpretation of our rules. This language is not consistent with our current practice. If a person is denied only on a financial basis we do not consider them eligible, but under this language we would have to. Also, this language is not consistent with the provision created by this draft in s. 48.975(3m)(b) for AA to 21. Although this issue is not related to extended out of home care- we need to be clear that there can be eligibility to 21 based on disability in our statute and it must be consistent with our practice/interpretation of rules.

DN note  
AM of 48,38  
2) (d) covers 9.  
It. pp must be  
prepared? pp  
must be reviewed

8. Add reference to 48.366 – Voluntary Transition to IL in both 48.38(5m) and 938.38(5m). Sections 18-19: Child is defined as a person who is over 18 in certain circumstances. Then in the new language of 48.57(3n)(b)1., the subdivision does not apply to a person 18 or older for whom a payment is made under the paragraph. The question is – is there a clearer way to draft this – will it be confusing to define the person as a child and then use person? I think the second clause which refers to this as a person for whom a payment is made probably clarifies it, but just don't want any unnecessary confusion.

1) child  
= use defined  
term

10. 48.975(3m)(b) p. 14- Re: adoption assistance -This should reference the type of SSA denial more specifically to be consistent with our practice. This language is not consistent with our current practice or interpretation of our rules (must have a SS denial based on disability and not based on finances). This provision is not consistent with the SG provision created in 48.623 above – although in practice we use the same test for eligibility.

DN note  
So youth over  
18 can stay  
in a RCC

11. Sections 20 – 21: I don't understand why we need section 48.599 (1g). if it is the set up for the CBRF exception in 50.01, wouldn't a reference to 48.366 suffice?

12. 48.366(1)(b) p.4 – This should also say on the date the person attains 18 year of age – just like (1)(a).

13. 938.366(3)(d) p. 18 – This should also refer to the department of corrections as an agency that enters into a VITLA and refer to the department of corrections as an agency that should have placement and care responsibility. Under s. 938.34(4n), 938.355(4)(b) and 938.538(5)(a) it appears that the department of corrections or a county department may have aftercare supervision responsibility for a youth after age 18.

14. 938.366(4)(c) p. 19 – Rulemaking authority for kinship care, SG, and AA should not be provided to DOC and should not be provided in ch. 938. These are ch. 48 administered programs.

DN note  
No - et law see (4)(intro.)