

# State of Wisconsin



2009 Assembly Bill 164

Date of enactment: **December 1, 2009**  
Date of publication\*: **December 15, 2009**

## 2009 WISCONSIN ACT 81

AN ACT *to amend* 48.64 (title), 48.64 (1), 48.64 (1m), 48.64 (1r), 48.64 (2), 48.64 (4) (a) and 48.64 (4) (c); and *to repeal and recreate* 48.64 (title), 48.64 (1), 48.64 (1m), 48.64 (1r), 48.64 (2), 48.64 (4) (a) and 48.64 (4) (c) of the statutes; **relating to:** notice of intent to remove a child from the home of a relative and review of decisions or orders involving the placement and care of a child placed in the home of a relative.

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

**SECTION 1.** 48.64 (title) of the statutes is amended to read:

**48.64 (title) Placement of children in foster homes, treatment foster homes and group homes out-of-home care.**

**SECTION 1m.** 48.64 (title) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

**48.64 (title) Placement of children in out-of-home care.**

**SECTION 2.** 48.64 (1) of the statutes is amended to read:

**48.64 (1) DEFINITION.** In this section, "agency" means the department, the department of corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes or in the homes of relatives other than a parent.

**SECTION 2m.** 48.64 (1) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

**48.64 (1) DEFINITION.** In this section, "agency" means the department, the department of corrections, a

county department, or a licensed child welfare agency authorized to place children in foster homes or group homes or in the homes of relatives other than a parent.

**SECTION 3.** 48.64 (1m) of the statutes is amended to read:

**48.64 (1m) FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME OUT-OF-HOME CARE AGREEMENTS.** If an agency places a child in a foster home, treatment foster home, or group home or in the home of a relative other than a parent under a court order or places a child in a foster home, treatment foster home, or group home under a voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home, treatment foster home, or group home or in the home of a relative other than a parent for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child may not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

it or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the proposed removal. If the safety of the child requires earlier removal, s. 48.19 ~~shall apply~~ applies. If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing, or medical treatment.

**SECTION 3m.** 48.64 (1m) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

48.64 (1m) OUT-OF-HOME CARE AGREEMENTS. If an agency places a child in a foster home or group home or in the home of a relative other than a parent under a court order or places a child in a foster home or group home under a voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require release to the agency. If a child has been in a foster home or group home or in the home of a relative other than a parent for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child may not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires it or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the proposed removal. If the safety of the child requires earlier removal, s. 48.19 applies. If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing, or medical treatment.

**SECTION 4.** 48.64 (1r) of the statutes is amended to read:

48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a school-age child in a foster home, ~~a treatment foster home or a~~, or group home or in the home of a relative other than a parent, the agency shall notify the clerk of the school district in which the foster home, treatment foster home ~~or~~, group home, or home of the relative is located that a school-age child has been placed in a foster home, treatment foster home ~~or~~, group home, or home of a relative in the school district.

**SECTION 4m.** 48.64 (1r) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a school-age child in a foster home or

group home or in the home of a relative other than a parent, the agency shall notify the clerk of the school district in which the foster home, group home, or home of the relative is located that a school-age child has been placed in a foster home, group home, or home of a relative in the school district.

**SECTION 5.** 48.64 (2) of the statutes is amended to read:

48.64 (2) SUPERVISION OF FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME OUT-OF-HOME CARE PLACEMENTS. Every child who is placed in a foster home, treatment foster home, or group home shall be under the supervision of an agency. Every child who is placed in the home of a relative other than a parent under a court order shall be under the supervision of an agency.

**SECTION 5m.** 48.64 (2) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

48.64 (2) SUPERVISION OF OUT-OF-HOME CARE PLACEMENTS. Every child who is placed in a foster home or group home shall be under the supervision of an agency. Every child who is placed in the home of a relative other than a parent under a court order shall be under the supervision of an agency.

**SECTION 6.** 48.64 (4) (a) of the statutes is amended to read:

48.64 (4) (a) Any decision or order issued by an agency that affects the head of a foster home, treatment foster home, or group home, the head of the home of a relative other than a parent in which a child is placed, or the ~~children~~ child involved may be appealed to the department under fair hearing procedures established under department rules. The department shall, upon rules promulgated by the department. Upon receipt of an appeal, the department shall give the head of the home reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this ~~subsection~~ paragraph, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses. The department shall grant a continuance for a reasonable period of time when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department

shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an agency action being appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

**SECTION 6m.** 48.64 (4) (a) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

48.64 (4) (a) Any decision or order issued by an agency that affects the head of a foster home or group home, the head of the home of a relative other than a parent in which a child is placed, or the child involved may be appealed to the department under fair hearing procedures established under rules promulgated by the department. Upon receipt of an appeal, the department shall give the head of the home reasonable notice and an opportunity for a fair hearing. The department may make any additional investigation that the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this paragraph, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses. The department shall grant a continuance for a reasonable period of time when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of

the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an agency action being appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

**SECTION 7.** 48.64 (4) (c) of the statutes is amended to read:

48.64 (4) (c) The circuit court for the county where the dispositional order placing a child in a foster home, treatment foster home, or group home or in the home of a relative other than a parent was entered or the voluntary agreement under s. 48.63 ~~so~~ placing a child in a foster home, treatment foster home, or group home was made has jurisdiction upon petition of any interested party over ~~a~~ the child who is placed in ~~a~~ the foster home, treatment foster home, ~~or~~ group home, or home of the relative. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home or in the home of a relative other than a parent, the foster parent or relative may present relevant evidence at the hearing. The petitioner has the burden of proving by clear and convincing evidence that the decision or order issued by the agency is not in the best interests of the child.

**SECTION 7m.** 48.64 (4) (c) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

48.64 (4) (c) The circuit court for the county where the dispositional order placing a child in a foster home or group home or in the home of a relative other than a parent was entered or the voluntary agreement under s. 48.63 placing a child in a foster home or group home was made has jurisdiction upon petition of any interested party over the child who is placed in the foster home, group home, or home of the relative. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home or in the home of a relative other than a parent, the foster parent or relative may present relevant evidence at the hearing. The petitioner has the burden of proving by clear and convincing evidence that

the decision or order issued by the agency is not in the best interests of the child.

**SECTION 8. Initial applicability.**

(1) AGENCY DECISIONS INVOLVING PLACEMENT OF CHILD. This act first applies to decisions or orders involving the placement and care of a child that are made on the effective date of this subsection.

**SECTION 9m. Effective dates.** This act takes effect

on the day after publication, except as follows:

(1) TREATMENT FOSTER HOMES. The repeal and recreation of sections 48.64 (title), (1), (1m), (1r), (2), and (4) (a) and (c) of the statutes takes effect on the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under section 48.62 (9) of the statutes, as created by [2009 Wisconsin Act 28](#).

---