



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 742**

February 20, 1996 – Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT** *to repeal* 891.39 (1) (b); *to renumber* 891.39 (1) (a); *to amend* 48.27 (8),
2 48.275 (2) (a), 48.275 (2) (c), 48.275 (2) (d), 48.275 (3), 55.06 (9) (b), 758.19 (6)
3 (b), 880.33 (2) (a) 3., 891.39 (2) (a), 938.235 (8), 938.27 (8), 938.275 (2) (a),
4 938.275 (2) (c) and 938.275 (2) (d); *to repeal and recreate* 48.235 (8); and *to*
5 **create** 758.19 (6) (cm) of the statutes; **relating to:** state payments to counties
6 for guardian ad litem costs and the responsibility of parents and guardians for
7 guardian ad litem compensation in proceedings involving children.

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

8 **SECTION 1.** 48.235 (8) of the statutes, as affected by 1995 Wisconsin Act 27, is
9 repealed and recreated to read:

10 48.235 (8) COMPENSATION. (a) A guardian ad litem appointed under this
11 chapter shall be allowed reasonable compensation, and, except as provided in par.
12 (b) or in s. 48.275 (2) (a), or unless the court orders otherwise, the county of venue
13 shall pay that compensation. If the court orders a county to pay the compensation

1 of a guardian ad litem, the amount ordered may not exceed the compensation paid
2 to private attorneys under s. 977.08 (4m) (b).

3 (b) The compensation of a guardian ad litem appointed under this chapter shall
4 be paid by the proposed adoptive parents in uncontested termination proceedings
5 and uncontested adoption cases under ss. 48.835 and 48.837 and by the agency in
6 uncontested termination proceedings and uncontested adoptions under s. 48.833. If
7 the proposed adoptive parents are unable to pay, the court may direct that the county
8 of venue pay the compensation, in whole or in part, and may direct that the proposed
9 adoptive parents reimburse the county, in whole or in part, for the payment. At any
10 time before the final order for adoption, the court may order that payments be placed
11 in an escrow account in an amount estimated to be sufficient to pay the compensation
12 of the guardian ad litem.

13 **SECTION 2.** 48.27 (8) of the statutes, as affected by 1995 Wisconsin Act 77, is
14 amended to read:

15 48.27 (8) When a petition is filed under s. 48.13, the court shall notify, in
16 writing, the child's parents or guardian that they may be ordered to reimburse this
17 state or the county for the costs of legal counsel or guardian ad litem provided for the
18 child, as provided under s. 48.275 (2).

19 **SECTION 3.** 48.275 (2) (a) of the statutes, as affected by 1995 Wisconsin Act 77,
20 is amended to read:

21 48.275 (2) (a) If this state or a county provides legal counsel to or a guardian
22 ad litem for a child subject to a proceeding under s. 48.13, the court shall order the
23 child's parent to reimburse the state or county in accordance with par. (b) or (c). The
24 court may not order reimbursement if a parent is the complaining or petitioning
25 party or if the court finds that the interests of the parent and the interests of the child

1 in the proceeding are substantially and directly adverse and that reimbursement
2 would be unfair to the parent. The court may not order reimbursement until the
3 completion of the proceeding or until the state or county is no longer providing the
4 child with legal counsel or a guardian ad litem in the proceeding.

5 **SECTION 4.** 48.275 (2) (c) of the statutes is amended to read:

6 48.275 (2) (c) If the county provides the child with legal counsel or with a
7 guardian ad litem and the court orders reimbursement under par. (a), the court shall
8 either make a determination of indigency or shall appoint the county department to
9 make the determination. If the court or the county department finds that the parent
10 is not indigent or is indigent in part, the court shall establish the amount of
11 reimbursement and shall order the parent to pay it.

12 **SECTION 5.** 48.275 (2) (d) of the statutes, as affected by 1995 Wisconsin Act 27,
13 is amended to read:

14 48.275 (2) (d) Reimbursement payments shall be made to the clerk of courts
15 of the county where the proceedings took place. Each payment shall be transmitted
16 to the county treasurer, who shall deposit 25% of the amount paid for state-provided
17 counsel in the county treasury and transmit the remainder to the state treasurer.
18 Payments transmitted to the state treasurer shall be deposited in the general fund
19 and credited to the appropriation account under s. 20.550 (1) (L). The county
20 treasurer shall deposit 100% of the amount paid for county-provided counsel or
21 county-provided guardian ad litem in the county treasury.

22 **SECTION 6.** 48.275 (3) of the statutes, as affected by 1995 Wisconsin Act 77, is
23 amended to read:

24 48.275 (3) This section does not apply to any proceeding under s. 48.235 (8) (b)
25 or 48.375 (7).

1 **SECTION 7.** 55.06 (9) (b) of the statutes is amended to read:

2 55.06 **(9)** (b) Transfer may be made between placement units or from a
3 placement unit to a medical facility other than those specified in pars. (c) to (e) by a
4 guardian or placement facility without approval by a court. When transfer is made
5 by a placement facility, 24 hours' prior written notice of the transfer shall be provided
6 to the guardian, when feasible. If it is not feasible to notify the guardian in advance,
7 written notice shall be provided immediately upon transfer, and notice shall also be
8 provided to the court and to the board designated under s. 55.02 or an agency
9 designated by it within a reasonable time, not to exceed 48 hours from the time of the
10 transfer. Upon petition to a court by a guardian, ward, or attorney, or other
11 interested person specifying objections to a transfer, the court shall order a hearing,
12 within 96 hours after filing of the petition, to determine whether there is probable
13 cause to believe that the transfer is consistent with the requirements specified in par.
14 (a) and is necessary for the best interests of the ward. The court shall notify the ward,
15 guardian and petitioner of the time and place of the hearing, and a guardian ad litem
16 shall be appointed to represent the ward. If the person is indigent, the county of legal
17 settlement shall be liable for guardian ad litem fees compensation. The petitioner,
18 ward and guardian shall have the right to attend, and to present and cross-examine
19 witnesses.

20 **SECTION 8.** 758.19 (6) (b) of the statutes, as affected by 1995 Wisconsin Act 27,
21 is amended to read:

22 758.19 **(6)** (b) From the appropriation under s. 20.625 (1) (e), the director of
23 state courts, beginning on July 1, 1995, shall annually on July 1 pay to each county
24 the county's share, as determined under par. (c), of the total appropriation under s.
25 20.625 (1) (e). The payment is designed to defray a county's guardian ad litem costs

1 but, except as provided in par. (d), the director of state courts may not require a
2 county to account for the county's guardian ad litem costs or the manner in which or
3 the purposes for which the county expends the payment. If a payment under this
4 subsection exceeds the county's guardian ad litem costs, the county is encouraged to
5 utilize that portion of the payment to provide or pay for training for guardians ad
6 litem and for guardian ad litem support services, such as social, family and mental
7 health services.

8 **SECTION 9.** 758.19 (6) (cm) of the statutes is created to read:

9 758.19 **(6)** (cm) In order to enhance the efficient use and compensation of
10 qualified and competent guardians ad litem, counties are urged to consider
11 contracting for guardian ad litem services, including support services for guardians
12 ad litem. The director of state courts, upon request, shall furnish a county with
13 information on the practices of other counties in this state in connection with
14 contracting for guardians ad litem and for support services for guardians ad litem.

15 **SECTION 10.** 880.33 (2) (a) 3. of the statutes is amended to read:

16 880.33 **(2)** (a) 3. If the person is indigent, the county of legal settlement shall
17 be the county liable for any fees compensation due the guardian ad litem and, if
18 counsel was not appointed under s. 977.08, for any legal fees due the person's legal
19 counsel.

20 **SECTION 11.** 891.39 (1) (a) of the statutes is renumbered 891.39 (1).

21 **SECTION 12.** 891.39 (1) (b) of the statutes, as affected by 1995 Wisconsin Act 27,
22 is repealed.

23 **SECTION 13.** 891.39 (2) (a) of the statutes is amended to read:

24 891.39 **(2)** (a) The mother of the child shall not be excused or privileged from
25 testifying fully in any action or proceeding mentioned in sub. (1) or in any action

1 affecting the family in which the determination of whether the child is a marital or
2 nonmarital child is involved or in issue, when ordered to testify by a court of record
3 or any judge thereof; but she shall not be prosecuted or subjected to any penalty or
4 forfeiture for or on account of testifying or producing evidence, except for perjury
5 committed in giving the testimony.

6 **SECTION 14.** 938.235 (8) of the statutes, as created by 1995 Wisconsin Act 77,
7 is amended to read:

8 938.235 (8) COMPENSATION. On order of the court, the guardian ad litem
9 appointed under this chapter shall be allowed reasonable compensation to be paid
10 by the county of venue, except as provided in s. 938.275 (2) (a) or unless the court
11 orders otherwise. If the court orders a county to pay the compensation of the
12 guardian ad litem, the amount ordered may not exceed the compensation paid to
13 private attorneys under s. 977.08 (4m) (b).

14 **SECTION 15.** 938.27 (8) of the statutes, as created by 1995 Wisconsin Act 77, is
15 amended to read:

16 938.27 (8) When a petition is filed under s. 938.12 or 938.13, the court shall
17 notify, in writing, the juvenile's parents or guardian that they may be ordered to
18 reimburse this state or the county for the costs of legal counsel or guardian ad litem
19 provided for the juvenile, as provided under s. 938.275 (2).

20 **SECTION 16.** 938.275 (2) (a) of the statutes, as created by 1995 Wisconsin Act
21 77, is amended to read:

22 938.275 (2) (a) If this state or a county provides legal counsel or a guardian ad
23 litem to a juvenile subject to a proceeding under s. 938.12 or 938.13, the court shall
24 order the juvenile's parent to reimburse the state or county in accordance with par.
25 (b) or (c). The court may not order reimbursement if a parent is the complaining or

1 petitioning party or if the court finds that the interests of the parent and the interests
2 of the juvenile in the proceeding are substantially and directly adverse and that
3 reimbursement would be unfair to the parent. The court may not order
4 reimbursement until the completion of the proceeding or until the state or county is
5 no longer providing the juvenile with legal counsel or a guardian ad litem in the
6 proceeding.

7 **SECTION 17.** 938.275 (2) (c) of the statutes, as created by 1995 Wisconsin Act
8 77, is amended to read:

9 938.275 (2) (c) If the county provides the juvenile with legal counsel or a
10 guardian ad litem and the court orders reimbursement under par. (a), the court shall
11 either make a determination of indigency or shall appoint the county department to
12 make the determination. If the court or the county department finds that the parent
13 is not indigent or is indigent in part, the court shall establish the amount of
14 reimbursement and shall order the parent to pay it.

15 **SECTION 18.** 938.275 (2) (d) of the statutes, as created by 1995 Wisconsin Act
16 77, is amended to read:

17 938.275 (2) (d) Reimbursement payments shall be made to the clerk of courts
18 of the county where the proceedings took place. Each payment shall be transmitted
19 to the county treasurer, who shall deposit 25% of the amount paid for state-provided
20 counsel in the county treasury and transmit the remainder to the state treasurer.
21 Payments transmitted to the state treasurer shall be deposited in the general fund
22 and credited to the appropriation account under s. 20.550 (1) (L). The county
23 treasurer shall deposit 100% of the amount paid for county-provided counsel or
24 county-provided guardian ad litem in the county treasury.

25 **SECTION 19. Initial applicability.**

