



1997 ASSEMBLY BILL 324

April 28, 1997 - Introduced by Representatives PORTER and F. LASEE. Referred to Committee on Children and Families.

1 **AN ACT to amend** 48.14 (2) (b), 48.205 (1) (intro.), 48.205 (1) (a), 48.205 (1) (am),
2 48.205 (1) (b), 48.305, 48.977 (2) (a), 48.977 (4) (b) 3., 880.01 (7), 880.04 (1),
3 880.08 (3) (a), 880.26 (1) (a), 880.26 (1) (b), 880.26 (2) (a), 880.34 (1), 880.36 (4)
4 and 880.60 (17); and **to create** 48.13 (1m), 48.19 (1) (d) 8., 48.205 (1) (d), 880.26
5 (1) (am) and 880.26 (1) (bm) of the statutes; **relating to:** permitting a child who
6 is the custodial parent of a nonmarital child and whose parent, guardian or
7 legal custodian is not exercising care, custody and control over him or her to be
8 taken into and held in custody, to be found to be in need of protection or services
9 and to have a guardian appointed for him or her.

Analysis by the Legislative Reference Bureau

Under current law, a child may be taken into custody under circumstances in which a law enforcement officer believes on reasonable grounds that certain conditions exist, including the condition that the child has run away from his or her parents, guardian or legal or physical custodian. Also, under current law, a child who has been taken into custody may be held in custody if the intake worker of the court assigned to exercise jurisdiction under the children's code (juvenile court) determines that there is probable cause to believe that certain conditions exist,

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including the condition that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate. In addition, under current law, the juvenile court may assert its jurisdiction over a child who is alleged to be in need of protection or services (CHIPS) on certain grounds, including the ground that the child is without a parent or guardian. Finally, under current law, the juvenile court may appoint a guardian of the person of a child, including a child who has been found to be in need of protection or services because the child is without a parent or guardian. Currently, a guardianship of the person of a child terminates when the child attains the age of 18 years or marries, whichever occurs first.

This bill permits a law enforcement officer to take into custody, an intake worker to determine to hold in custody and a juvenile court to assert its CHIPS jurisdiction over and to appoint a guardian of the person of a child who is the custodial parent of a nonmarital child and whose parent, guardian or legal custodian is not exercising care, custody and control over the child. Under the bill, a guardianship of the person of such a child terminates when the child attains the age of 21 years or when the child marries and the child's spouse adopts the nonmarital child or the child marries the other parent of the child, whichever occurs first.

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:

1 **SECTION 1.** 48.13 (1m) of the statutes is created to read:

2 48.13 (1m) Who is the custodial parent of a nonmarital child and whose parent,
3 guardian or legal custodian is not exercising care, custody and control over him or
4 her.

5 **SECTION 2.** 48.14 (2) (b) of the statutes is amended to read:

6 48.14 (2) (b) The appointment and removal of a guardian of the person for a
7 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a) and 48.977 and
8 ch. 880 and, for a child found to be in need of protection or services under s. 48.13 (1)
9 because the child is without parent or guardian and for a child found to be in need
10 of protection or services under s. 48.13 (1m) because the child is the custodial parent

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1 of a nonmarital child and the child's parent, guardian or legal custodian is not
2 exercising care, custody and control over him or her.

3 **SECTION 3.** 48.19 (1) (d) 8. of the statutes is created to read:

4 48.19 (1) (d) 8. The child is the custodial parent of a nonmarital child and the
5 child's parent, guardian or legal custodian is not exercising care, custody and control
6 over him or her.

7 **SECTION 4.** 48.205 (1) (intro.) of the statutes is amended to read:

8 48.205 (1) (intro.) A child may be held under s. 48.207, 48.208 or 48.209 if the
9 intake worker determines that there is probable cause to believe the child is within
10 the jurisdiction of the court and if any of the following conditions apply:

11 **SECTION 5.** 48.205 (1) (a) of the statutes is amended to read:

12 48.205 (1) (a) Probable cause exists to believe that if the child is not held he or
13 she will cause injury to himself or herself or be subject to injury by others;.

14 **SECTION 6.** 48.205 (1) (am) of the statutes is amended to read:

15 48.205 (1) (am) Probable cause exists to believe that if the child is not held he
16 or she will be subject to injury by others, based on a determination under par. (a) or
17 a finding under s. 48.21 (4) that if another child in the home is not held that child will
18 be subject to injury by others;.

19 **SECTION 7.** 48.205 (1) (b) of the statutes is amended to read:

20 48.205 (1) (b) Probable cause exists to believe that the parent, guardian or legal
21 custodian of the child or other responsible adult is neglecting, refusing, unable or
22 unavailable to provide adequate supervision and care and that services to ensure the
23 child's safety and well-being are not available or would be inadequate; or.

24 **SECTION 8.** 48.205 (1) (d) of the statutes is created to read:

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1 48.205 (1) (d) Probable cause exists to believe that the child is the custodial
2 parent of a nonmarital child and that the child's parent, guardian or legal custodian
3 is not exercising care, custody and control over him or her.

4 **SECTION 9.** 48.305 of the statutes is amended to read:

5 **48.305 Hearing upon the involuntary removal of a child.**

6 Notwithstanding other time periods for hearings under this chapter, if a child is
7 removed from the physical custody of the child's parent or guardian under s. 48.19
8 (1) (c) or (d) 5. or 8. without the consent of the parent or guardian, the court shall
9 schedule a plea hearing and fact-finding hearing within 30 days of a request from
10 the parent or guardian from whom custody was removed. The plea hearing and
11 fact-finding hearing may be combined. This time period may be extended only with
12 the consent of the requesting parent or guardian.

13 **SECTION 10.** 48.977 (2) (a) of the statutes is amended to read:

14 48.977 (2) (a) That the child has been adjudged to be in need of protection or
15 services under s. 48.13 (1), (1m), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m)
16 or 938.13 (4) and been placed, or continued in a placement, outside of his or her home
17 pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365,
18 938.345, 938.357, 938.363 or 938.365 for a cumulative total period of one year or
19 longer.

20 **SECTION 11.** 48.977 (4) (b) 3. of the statutes is amended to read:

21 48.977 (4) (b) 3. The date the child was adjudged in need of protection or
22 services under s. 48.13 (1), (1m), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m)
23 or 938.13 (4) and the dates that the child has been placed, or continued in a
24 placement, outside of his or her home pursuant to one or more court orders under s.
25 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365.

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1 **SECTION 12.** 880.01 (7) of the statutes is amended to read:

2 880.01 (7) "Minor" means a person who has not attained the age of 18 years or,
3 if the person is the custodial parent of a nonmarital child, "minor" means a person
4 who has not attained the age of 21 years.

5 **SECTION 13.** 880.04 (1) of the statutes is amended to read:

6 880.04 (1) EMANCIPATION OF MARRIED MINORS. Except for ~~minors~~ a minor who is
7 found to be incompetent and a minor who is the custodial parent of a nonmarital
8 child, upon marriage, a minor ~~shall is~~ no longer be a proper subject for guardianship
9 of the person and a guardianship of the person is revoked by the marriage of a minor
10 ward. Upon application, the court may release in whole or in part the estate of a
11 minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship
12 of an incompetent is subject to review under s. 880.34. A minor who is the custodial
13 parent of a nonmarital child is no longer a proper subject for guardianship of the
14 person and a guardianship of the person of such a minor is revoked if the minor
15 marries and the minor's spouse adopts the nonmarital child or if the minor and the
16 other parent of the nonmarital child intermarry under s. 767.60.

17 **SECTION 14.** 880.08 (3) (a) of the statutes is amended to read:

18 880.08 (3) (a) ~~To~~ If The proposed ward is not the custodial parent of a
19 nonmarital child, to the proposed ward's spouse or, if the proposed ward is the
20 custodial parent of a nonmarital child, to any person who has filed a declaration of
21 interest in the nonmarital child under s. 48.025 and to any other person who may be
22 the other parent of the nonmarital child;

23 **SECTION 15.** 880.26 (1) (a) of the statutes is amended to read:

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1 880.26 (1) (a) When a minor ward who is not the custodial parent of a
2 nonmarital child attains his ~~or her~~ majority the age of 18 years, unless the minor
3 ward is incompetent.

4 **SECTION 16.** 880.26 (1) (am) of the statutes is created to read:

5 880.26 (1) (am) When a minor ward who is the custodial parent of a nonmarital
6 child attains the age of 21 years, unless the minor ward is incompetent.

7 **SECTION 17.** 880.26 (1) (b) of the statutes is amended to read:

8 880.26 (1) (b) When a minor ward who is not the custodial parent of a
9 nonmarital child lawfully marries.

10 **SECTION 18.** 880.26 (1) (bm) of the statutes is created to read:

11 880.26 (1) (bm) When a minor ward who is the custodial parent of a nonmarital
12 child marries and the minor's spouse adopts the nonmarital child or when such a
13 minor ward and the other parent of the nonmarital child intermarry under s. 767.60.

14 **SECTION 19.** 880.26 (2) (a) of the statutes is amended to read:

15 880.26 (2) (a) When a minor ward attains his ~~or her~~ majority the age of 18 years.

16 **SECTION 20.** 880.34 (1) of the statutes is amended to read:

17 880.34 (1) Any guardianship of an individual found to be incompetent under
18 this chapter shall continue during the life of the incompetent, or until terminated by
19 the court. Upon reaching the age of ~~majority~~ 18 years, an incompetent subject to
20 guardianship under this chapter who is not the custodial parent of a nonmarital child
21 shall be reviewed by the court for the purpose of determining whether the
22 guardianship should be continued or modified. Upon reaching the age of 21 years,
23 an incompetent subject to guardianship under this chapter who is the custodial
24 parent of a nonmarital child shall be reviewed by the court for the purpose of
25 determining whether the guardianship should be continued or modified. The court

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1 shall make a specific finding of any rights under s. 880.33 (3) which the individual
2 is competent to exercise at the time.

3 **SECTION 21.** 880.36 (4) of the statutes is amended to read:

4 880.36 (4) A standby guardianship of a minor who is not the custodial parent
5 of a nonmarital child becomes inoperative at the age of 18, and a standby
6 guardianship of a minor who is the custodial parent of a nonmarital child becomes
7 inoperative at the age of 21, unless there is a further determination of incompetency
8 at that time.

9 **SECTION 22.** 880.60 (17) of the statutes is amended to read:

10 880.60 (17) DISCHARGE OF GUARDIAN AND RELEASE OF SURETIES. In addition to any
11 other provisions of law relating to judicial restoration and discharge of guardian, a
12 certificate by the U.S. department of veterans affairs showing that a minor ward who
13 is not the custodial parent of a nonmarital child has attained ~~majority~~ the age of 18
14 years, or that a minor ward who is the custodial parent of a nonmarital child has
15 attained the age of 21 years, or that an incompetent ward has been rated competent
16 by the U.S. department of veterans affairs upon examination in accordance with law
17 shall be prima facie evidence that the ward has attained majority, or has recovered
18 competency. Upon hearing after notice as provided by this section and the
19 determination by the court that the ward has attained majority or has recovered
20 competency, an order shall be entered to that effect, and the guardian shall file a final
21 account. Upon hearing after notice to the former ward and to the U.S. department
22 of veterans affairs as in case of other accounts, upon approval of the final account,
23 and upon delivery to the ward of the assets due from the guardian, the guardian shall
24 be discharged and the sureties released.

25 **SECTION 23. Initial applicability.**

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SECTION 23

1 (1) This act first applies to a child who is the custodial parent of a nonmarital
2 child and whose parent, guardian or legal custodian is not exercising care, control
3 and custody over him or her on the effective date of this subsection.

4 (END)