



## 2009 ASSEMBLY BILL 164

March 19, 2009 – Introduced by Representatives GRIGSBY, SEIDEL, SINICKI, BERCEAU, PASCH, TOLES, A. WILLIAMS, FIELDS, BALLWEG, TURNER and YOUNG, cosponsored by Senators TAYLOR and LASSA. Referred to Committee on Children and Families.

1     **AN ACT to amend** 48.64 (title), 48.64 (1), 48.64 (1m), 48.64 (1r), 48.64 (2), 48.64  
2           (4) (a), 48.64 (4) (c), 48.981 (3) (d) 1. and 48.981 (7) (a) 4. of the statutes; **relating**  
3           **to:** notice of intent to remove a child from the home of a relative and review of  
4           decisions or orders involving the placement and care of a child placed in the  
5           home of a relative.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a child has been placed in a foster home, treatment foster home, or group home for six months or longer, the Department of Children and Families (DCF), the Department of Corrections, the county department of human services or social services (county department), or licensed child welfare agency (collectively, “agency”) that placed the child must give the head of the home written notice of intent to remove the child from the home, stating the reasons for the removal. In those cases, the child may not be removed from the home before completion of a hearing before DCF or the circuit court to review the removal decision, if a hearing has been requested, or 30 days after receipt of the notice of intent to remove, whichever is later, unless the safety of the child requires removal.

Also, under current law, any decision or order issued by an agency that affects the head of a foster home, treatment foster home, or group home or the children involved may be appealed to DCF under fair hearing procedures. Under those procedures, the head of the home is entitled to be represented by counsel, to examine documents and records, to bring witnesses, to confront and cross-examine adverse witnesses, and to have judicial review of DCF’s decision.

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In addition, under current law, an interested party may file a petition with the circuit court for the county where a child is placed alleging that a decision or order of the agency supervising the child's placement is not in the best interests of the child. On receipt of a petition, the circuit court may call a hearing for the purpose of reviewing the decision or order. If the child is placed in a foster home, the foster parent may present relevant evidence at the hearing.

This bill grants to a relative, other than a parent, in whose home a child is placed the same procedural rights relating to notice of intent to remove a child from the home and review of decisions or orders involving the placement and care of the child that are granted a foster parent under current law. Specifically, under the bill:

1. The agency that placed the child in the home of the relative must give the relative written notice of intent to remove the child from the home, stating the reasons for the removal, and the child may not be removed from the home before completion of a hearing before DCF or the circuit court to review the removal decision, if a hearing has been requested, or 30 days after receipt of the notice of intent to remove, whichever is later, unless the safety of the child requires removal.

2. Any decision or order issued by an agency that affects the relative or the child may be appealed to DCF under fair hearing procedures that include the rights to be represented by counsel, to examine documents and records, to bring witnesses, to confront and cross-examine adverse witnesses, and to have judicial review of DCF's decision.

3. The relative may file a petition with the circuit court for the county where the child is placed alleging that a decision or order of the agency supervising the child's placement is not in the best interests of the child, the circuit court may call a hearing for the purpose of reviewing the decision or order, and the relative may present relevant evidence at the hearing.

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

2           **48.64 (title) Placement of children in foster homes, treatment foster**  
3 **homes and group homes out-of-home care.**

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

5           **48.64 (1) DEFINITION.** In this section, “agency” means the department, the  
6 department of corrections, a county department, or a licensed child welfare agency

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1 authorized to place children in foster homes, treatment foster homes, or group homes  
2 or in the homes of relatives other than a parent.

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

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

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

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

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

9           48.64 (2) SUPERVISION OF FOSTER HOME, ~~TREATMENT FOSTER HOME AND GROUP HOME~~  
10 OUT-OF-HOME CARE PLACEMENTS. Every child who is placed in a foster home, treatment  
11 foster home, or group home shall be under the supervision of an agency. Every child  
12 who is placed in the home of a relative other than a parent under a court order shall  
13 be under the supervision of an agency.

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

15           48.64 (4) (a) Any decision or order issued by an agency that affects the head of  
16 a foster home, treatment foster home, or group home, the head of the home of a  
17 relative other than a parent in which a child is placed, or the ~~children~~ child involved  
18 may be appealed to the department under fair hearing procedures established under  
19 ~~department rules.~~ The department shall, upon rules promulgated by the  
20 department. Upon receipt of an appeal, the department shall give the head of the  
21 home reasonable notice and an opportunity for a fair hearing. The department may  
22 make such additional investigation as the department considers necessary. The  
23 department shall give notice of the hearing to the head of the home and to the  
24 departmental subunit, county department, or child welfare agency that issued the  
25 decision or order. Each person receiving notice is entitled to be represented at the

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1 hearing. At all hearings conducted under this subsection paragraph, the head of the  
2 home, or a representative of the head of the home, shall have an adequate  
3 opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records  
4 to be used at the hearing at a reasonable time before the date of the hearing as well  
5 as during the hearing, to bring witnesses, to establish all pertinent facts and  
6 circumstances, and to question or refute any testimony or evidence, including an  
7 opportunity to confront and cross-examine adverse witnesses. The department  
8 shall grant a continuance for a reasonable period of time when an issue is raised for  
9 the first time during a hearing. This requirement may be waived with the consent  
10 of the parties. The decision of the department shall be based exclusively on evidence  
11 introduced at the hearing. A transcript of testimony and exhibits, or an official report  
12 containing the substance of what transpired at the hearing, together with all papers  
13 and requests filed in the proceeding, and the findings of the hearing examiner shall  
14 constitute the exclusive record for decision by the department. The department shall  
15 make the record available at any reasonable time and at an accessible place to the  
16 head of the home or his or her representative. Decisions by the department shall  
17 specify the reasons for the decision and identify the supporting evidence. No person  
18 participating in an agency action being appealed may participate in the final  
19 administrative decision on that action. The department shall render its decision as  
20 soon as possible after the hearing and shall send a certified copy of its decision to the  
21 head of the home and to the departmental subunit, county department, or child  
22 welfare agency that issued the decision or order. The decision shall be binding on all  
23 parties concerned.

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

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1           48.64 (4) (c) The circuit court for the county where the dispositional order  
 2 placing a child in a foster home, treatment foster home, or group home or in the home  
 3 of a relative other than a parent was entered or the voluntary agreement under s.  
 4 48.63 so placing a child in a foster home, treatment foster home, or group home was  
 5 made has jurisdiction upon petition of any interested party over ~~a~~ the child who is  
 6 placed in ~~a~~ the foster home, treatment foster home, or group home, or home of the  
 7 relative. The circuit court may call a hearing, at which the head of the home and the  
 8 supervising agency under sub. (2) shall be present, for the purpose of reviewing any  
 9 decision or order of that agency involving the placement and care of the child. If the  
 10 child has been placed in a foster home or in the home of a relative other than a parent,  
 11 the foster parent or relative may present relevant evidence at the hearing. The  
 12 petitioner has the burden of proving by clear and convincing evidence that the  
 13 decision or order issued by the agency is not in the best interests of the child.

**SECTION 8. Initial applicability.**

14           (1) AGENCY DECISIONS INVOLVING PLACEMENT OF CHILD. This act first applies to  
 15 decisions or orders involving the placement and care of a child that are made on the  
 16 effective date of this subsection.  
 17

18                                   (END)