

1 **AN ACT** *to renumber and amend* 48.355 (2d) (c) and 938.355 (2d) (c); *to amend*
2 48.21 (5) (b) 3., 48.32 (1) (b) 2., 48.355 (2) (b) 6r., 48.355 (2d) (b) (intro.), 48.357
3 (2v) (a) 3., 48.363 (1) (a), 48.365 (2m) (a) 2., 48.368 (1) and (2) (intro.), 48.415 (2)
4 (a) 2. b., 938.21 (5) (b) 3., 938.32 (1) (c) 2., 938.355 (2) (b) 6r. and (2d) (b) (intro.),
5 938.357 (2v) (a) 3., 938.363 (1) (a), 938.365 (2m) (a) 2. and 938.368 (1) and (2)
6 (intro.); and *to create* 48.355 (2d) (c) 1. and 938.355 (2d) (c) 1. and 2. of the statutes;
7 **relating to:** reasonable efforts by an agency to return a child safely home when a
8 child or juvenile has been adjudged in need of protection or services.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Permanency for Young Children in the Child Welfare System.

Background

The Adoption and Safe Families Act of 1997 (ASFA) requires that reasonable efforts be made to preserve and reunify a family prior to a child’s removal from the home, and, if removed from the home, to make it possible for the child’s safe return to the home or to achieve any other goal of the child’s permanency plan.

ASFA specifies that reasonable efforts “shall not be required” under certain egregious circumstances. These have been codified in Wisconsin law to specify that a court is not required to include a finding as to whether an agency has made reasonable efforts if a parent:

- Has subjected the child to aggravated circumstances, including torture, chronic abuse, sexual abuse, or felony abandonment of the child.
- Committed or attempted murder of the child’s other parent.
- Committed an assault crime that resulted in great or substantial bodily harm to the child or another child of the parent.
- Had parental rights to another child involuntarily terminated.

- Has relinquished custody of the child within 72 hours of the child's birth.

Wisconsin law does not expressly prohibit a juvenile court from requiring a social service agency to make reasonable efforts in these circumstances, nor does the law specify a standard to evaluate when reasonable efforts may be required under these circumstances.

In addition, under Wisconsin law, when considering a petition for termination of a person's parental rights (TPR) under the ground that a child continues to be in need of protection or services, a number of elements must be found, including that a social services agency has made reasonable efforts to provide the services ordered by the court. No exception is made for the egregious circumstances under which reasonable efforts are not required.

Also under Wisconsin law, if a court has ordered an agency to make reasonable efforts, there is no authority for that order to be lifted. Thus, a social services agency must continue to make reasonable efforts with respect to the parent, for the child's safe return to the home, whether or not those efforts remain consistent with the child's permanency plan.

Bill Draft

This draft revises the requirements for a responsible agency to make reasonable efforts to return a child safely to the home as follows:

- Specifies that a court is prohibited from requiring reasonable efforts to prevent a child from being removed from the home or to reunify the family if there are egregious circumstances under which reasonable efforts are not required, unless the court determines that such efforts would be in the best interests of the child.
- Specifies in the TPR ground based upon a child's continuing need of protection or services that the requirement for an agency to have made reasonable efforts to reunify the family is inapplicable if reasonable efforts were not previously required due to the statutory egregious circumstances, or the order for reasonable efforts was suspended and not reinstated.
- Specifies that a court may suspend, or later reinstate, the portion of a child in need of protection or services (CHIPS) order that requires reasonable efforts to help a parent meet the conditions for a child's safe return to the home, if such suspension or reinstatement of efforts is consistent with the child's permanency plan.

Because the Juvenile Justice Code contains parallel provisions to the Children's Code for holding a child or juvenile in custody, the draft

revises the parallel provisions relating to reasonable efforts in both the Children's Code and the Juvenile Justice Code to make both codes consistent.

1 **SECTION 1.** 48.21 (5) (b) 3. of the statutes is amended to read:

2 48.21 **(5)** (b) 3. If the judge or circuit court commissioner finds that any of the
3 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a
4 ~~determination that~~ an order prohibiting the county department, department, in a county having
5 a population of 500,000 or more, or agency primarily responsible for providing services under
6 the custody order ~~is not required to make~~ from making reasonable efforts with respect to the
7 parent to make it possible for the child to return safely to his or her home, unless the judge or
8 circuit court commissioner determines that such efforts would be in the best interests of the
9 child.

NOTE: This SECTION specifies that at a temporary physical custody hearing, for a child alleged to be in need of protection or services, a juvenile court must order that an agency may not make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

10 **SECTION 2.** 48.32 (1) (b) 2. of the statutes is amended to read:

11 48.32 **(1)** (b) 2. If the judge or circuit court commissioner finds that any of the
12 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
13 consent decree shall include a ~~determination that~~ an order prohibiting the county department,
14 department, in a county having a population of 500,000 or more, or agency primarily
15 responsible for providing services under the consent decree ~~is not required to make~~ from
16 making reasonable efforts with respect to the parent to make it possible for the child to return
17 safely to his or her home, unless the judge or circuit court commissioner determines that such
18 efforts would be in the best interests of the child.

NOTE: This SECTION specifies that a CHIPS consent decree must order that an agency may not make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

1 **SECTION 3.** 48.355 (2) (b) 6r. of the statutes is amended to read:

2 48.355 (2) (b) 6r. If the court finds that any of the circumstances specified in sub. (2d)
3 (b) 1. to 5. applies with respect to a parent, ~~a determination that~~ an order prohibiting the county
4 department, department, in a county having a population of 500,000 or more, or agency
5 primarily responsible for providing services under the court order ~~is not required to make~~ from
6 making reasonable efforts with respect to the parent to make it possible for the child to return
7 safely to his or her home, unless the court determines that such efforts would be in the best
8 interests of the child.

NOTE: This SECTION specifies that in the written contents of a CHIPS dispositional order a court must order that an agency may not make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

9 **SECTION 4.** 48.355 (2d) (b) (intro.) of the statutes is amended to read:

10 48.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court ~~is not required to~~ shall
11 include in a dispositional order a ~~finding as to whether~~ determination that the county
12 department, the department, in a county having a population of 500,000 or more, or the agency
13 primarily responsible for providing services under a court order ~~has made~~ was not required
14 to make reasonable efforts with respect to a parent of a child to prevent the removal of the child
15 from the home, ~~while assuring that the child's health and safety are the paramount concerns,~~
16 or a ~~finding as to whether~~ determination that the county department, department, or agency
17 ~~has made~~ was not required to make reasonable efforts with respect to a parent of a child to
18 achieve the permanency goal of returning the child safely to his or her home, unless the court

1 determines, or a court has determined under a prior order, that such efforts would be in the best
2 interests of the child, if the court finds any of the following:

NOTE: This SECTION specifies that in a CHIPS dispositional order a court must determine that an agency was not required to make reasonable efforts to prevent a child's removal or return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determined that such efforts were in the best interests of the child.

3 **SECTION 5.** 48.355 (2d) (c) of the statutes is renumbered 48.355 (2d) (c) (intro.) and
4 amended to read:

5 48.355 (2d) (c) If the court finds that any of the circumstances specified in par. (b) 1.
6 to 5. applies with respect to a parent, the court shall ~~hold~~ do all of the following:

7 2. Hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding to
8 determine the permanency goal and, if applicable, any concurrent permanency goals for the
9 child.

10 **SECTION 6.** 48.355 (2d) (c) 1. of the statutes is created to read:

11 48.355 (2d) (c) 1. Include in the order an order that the person or agency primarily
12 responsible for providing services to the child is prohibited from making reasonable efforts
13 with respect to the parent to make it possible for the child to return safely to his or her home,
14 unless the court determines that such efforts would be in the best interests of the child.

NOTE: SECTIONS 5 and 6 specify that a court must include in the CHIPS dispositional order an order that an agency may not make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

15 **SECTION 7.** 48.357 (2v) (a) 3. of the statutes is amended to read:

16 48.357 (2v) (a) 3. If the court finds that any of the circumstances specified in s. 48.355
17 (2d) (b) 1. to 5. applies with respect to a parent, a ~~determination that~~ an order prohibiting the

1 agency primarily responsible for providing services under the change in placement order is
2 ~~not required to make~~ from making reasonable efforts with respect to the parent to make it
3 possible for the child to return safely to his or her home, unless the court determines, or a court
4 has determined under a prior order, that such efforts would be in the best interests of the child.

NOTE: This SECTION specifies that a change in placement from a CHIPS dispositional order must order that an agency may not make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determined that such efforts were in the best interests of the child.

5 **SECTION 8.** 48.363 (1) (a) of the statutes is amended to read:

6 48.363 (1) (a) A child, the child's parent, guardian, legal custodian, or Indian custodian,
7 an expectant mother, an unborn child by the unborn child's guardian ad litem, any person or
8 agency bound by a dispositional order, or the district attorney or corporation counsel in the
9 county in which the dispositional order was entered may request a revision in the order that
10 does not involve a change in placement or a trial reunification, including a revision with
11 respect to the amount of child support to be paid by a parent or a suspension or reinstatement
12 of reasonable efforts under s. 48.355 (2) (b) 6. with respect to the parent to make it possible
13 for the child to return safely to his or her home if consistent with the child's permanency plan.

14 The court may also propose a revision. The request or court proposal shall set forth in detail
15 the nature of the proposed revision and what new information is available that affects the
16 advisability of the court's disposition. The request or court proposal shall be submitted to the
17 court. The court shall hold a hearing on the matter prior to any revision of the dispositional
18 order if the request or court proposal indicates that new information is available which affects
19 the advisability of the court's dispositional order, unless written waivers of objections to the
20 revision are signed by all parties entitled to receive notice and the court approves.

NOTE: This SECTION allows the court to suspend, or later reinstate, the portion of a CHIPS dispositional order that required an agency to make reasonable efforts with the parent for the child's safe return to the home, if suspension or reinstatement of such efforts is consistent with the child's permanency plan. A request for suspension or reinstatement of reasonable efforts must follow the statutory procedures established for revision of a dispositional order, including an evidentiary hearing on the issue of revision of the order.

1 **SECTION 9.** 48.365 (2m) (a) 2. of the statutes is amended to read:

2 48.365 (2m) (a) 2. If the judge finds that any of the circumstances specified in s. 48.355
3 (2d) (b) 1. to 5. applies with respect to a parent, the order shall ~~include a determination that~~
4 prohibit the person or agency primarily responsible for providing services to the child is ~~not~~
5 ~~required to make~~ from making reasonable efforts with respect to the parent to make it possible
6 for the child to return safely to his or her home, unless the judge determines that such efforts
7 would be in the best interests of the child.

NOTE: This SECTION specifies that in extending a CHIPS dispositional order, a court must order that an agency may not make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

8 **SECTION 10.** 48.368 (1) and (2) (intro.) of the statutes are amended to read:

9 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41 or 48.415
10 or an appeal from a judgment terminating or denying termination of parental rights is filed
11 during the year in which a dispositional order under s. 48.355, an extension order under s.
12 48.365, a voluntary agreement for placement of the child under s. 48.63, or a guardianship
13 order under ch. 880, 2003 stats., or s. 48.977 or ch. 54 is in effect, the dispositional or extension
14 order, voluntary agreement, or guardianship order shall remain in effect until all proceedings
15 related to the filing of the petition or an appeal are concluded. A court may suspend an order
16 under s. 48.355 (2) (b) 6., as provided in s. 48.363.

1 (2) (intro.) If a child's placement with a guardian appointed under s. 48.977 (2) is
2 designated by the court under s. 48.977 (3) as a permanent foster placement for the child while
3 a dispositional order under s. 48.345, a revision order under s. 48.363 or an extension order
4 under s. 48.365 is in effect with respect to the child, such dispositional order, revision order
5 or extension order shall remain in effect, unless an order under s. 48.355 (2) (b) 6. is suspended
6 as provided in s. 48.363, until the earliest of the following:

NOTE: This SECTION specifies that although a CHIPS dispositional order continues after the filing of a TPR petition, or a child's placement with a guardian is designated as a permanent foster placement, an order requiring an agency to make reasonable efforts to safely return the child may be suspended.

7 **SECTION 11.** 48.415 (2) (a) 2. b. of the statutes is amended to read:

8 48.415 (2) (a) 2. b. That the agency responsible for the care of the child and the family
9 or of the unborn child and expectant mother has made a reasonable effort to provide the
10 services ordered by the court, unless the responsible agency is not required under s. 48.355
11 (2) (b) 6r., 48.357 (2v) (a) 3., 48.363 (1) (a), 48.368 (1), 938.355 (2) (b) 6r., 938.357 (2v) (a)
12 3., 938.363 (1) (a), or 938.368 (1) to make reasonable efforts with respect to a parent to make
13 it possible for the child to return safely to his or her home.

NOTE: This SECTION specifies that, for the TPR ground of a child's continuing need of protection or services, reasonable efforts for the safe return of the child need not be shown when reasonable efforts for reunification either were not required or were suspended by the court.

14 **SECTION 12.** 938.21 (5) (b) 3. of the statutes is amended to read:

15 938.21 (5) (b) 3. If the court finds that any of the circumstances specified in s. 938.355
16 (2d) (b) 1. to 4. applies with respect to a parent, ~~a determination that~~ an order prohibiting the
17 county department or agency primarily responsible for providing services under the custody
18 order ~~is not required to make~~ from making reasonable efforts with respect to the parent to make

1 it possible for the juvenile to return safely to his or her home, unless the court determines that
2 such efforts would be in the best interests of the juvenile.

NOTE: This SECTION specifies that at a temporary physical custody hearing, for a juvenile alleged to be in need of protection or services, a court must order that an agency may not make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

3 **SECTION 13.** 938.32 (1) (c) 2. of the statutes is amended to read:

4 938.32 (1) (c) 2. If the court finds that any of the circumstances specified in s. 938.355
5 (2d) (b) 1. to 4. applies with respect to a parent, the consent decree shall include a
6 ~~determination that~~ an order prohibiting the county department or agency primarily responsible
7 for providing services under the consent decree ~~is not required to make~~ from making
8 reasonable efforts with respect to the parent to make it possible for the juvenile to return safely
9 to his or her home, unless the court determines that such efforts would be in the best interests
10 of the juvenile.

NOTE: This SECTION specifies that a consent decree for a juvenile alleged to be in need of protection or services must order that an agency may not make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

11 **SECTION 14.** 938.355 (2) (b) 6r. and (2d) (b) (intro.) of the statutes are amended to read:

12 938.355 (2) (b) 6r. If the court finds that any of the circumstances under sub. (2d) (b)
13 1. to 4. applies with respect to a parent, ~~a determination that~~ an order prohibiting the county
14 department or agency primarily responsible for providing services under the court order ~~is not~~
15 ~~required to make~~ from making reasonable efforts with respect to the parent to make it possible
16 for the juvenile to return safely to his or her home, unless the court determines that such efforts
17 would be in the best interests of the juvenile.

NOTE: This SECTION specifies that in the written contents of a juvenile in need of protection or services (JIPS) dispositional order a court must order that an agency may not make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

1 **(2d)** (b) (intro.) Notwithstanding sub. (2) (b) 6., the court is ~~not required to~~ shall include
2 in a dispositional order a ~~finding as to whether~~ determination that the county department or
3 the agency primarily responsible for providing services under a court order ~~has made~~ was not
4 required to make reasonable efforts with respect to a parent of a juvenile to prevent the removal
5 of the juvenile from the home, ~~while assuring that the juvenile's health and safety are the~~
6 ~~paramount concerns,~~ or, if applicable, a ~~finding as to whether~~ determination that the county
7 department or agency ~~has made~~ was not required to make reasonable efforts with respect to
8 a parent of a juvenile to achieve the permanency goal of returning the juvenile safely to his
9 or her home, unless the court determines, or a court has determined under a prior order, that
10 such efforts would be in the best interests of the juvenile, if the court finds any of the following:

NOTE: This SECTION specifies that in a JIPS dispositional order a court must determine that an agency was not required to make reasonable efforts to prevent a juvenile's removal or return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determined that such efforts were in the best interests of the juvenile.

11 **SECTION 15.** 938.355 (2d) (c) of the statutes is renumbered 938.355 (2d) (c) (intro.) and
12 amended to read:

13 938.355 **(2d)** (c) (intro.) If the court finds that any of the circumstances under par. (b)
14 1. to 4. applies with respect to a parent, the court shall ~~hold a hearing under s. 938.38 (4m)~~
15 ~~within 30 days after the date of that finding to determine the permanency goal and, if~~
16 ~~applicable, any concurrent permanency goals for the juvenile.~~ do all of the following:

17 **SECTION 16.** 938.355 (2d) (c) 1. and 2. of the statutes are created to read:

1 938.355 (2d) (c) 1. Include in the order an order that the person or agency primarily
2 responsible for providing services to the juvenile is prohibited from making reasonable efforts
3 with respect to the parent to make it possible for the juvenile to return safely to his or her home,
4 unless the court determines that such efforts would be in the best interests of the juvenile.

5 2. Hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to
6 determine the permanency goal and, if applicable, any concurrent permanency goals for the
7 juvenile.

NOTE: SECTIONS 15 and 16 specify that a court must include in the JIPS
dispositional order an order that an agency may not make reasonable
efforts to return a juvenile safely home when the statutorily defined
egregious circumstances are found to exist, unless the court determines
that such efforts would be in the best interests of the juvenile.

8 **SECTION 17.** 938.357 (2v) (a) 3. of the statutes is amended to read:

9 938.357 (2v) (a) 3. If the court finds that any of the circumstances under s. 938.355 (2d)
10 (b) 1. to 4. applies with respect to a parent, ~~a determination that~~ an order prohibiting the agency
11 primarily responsible for providing services under the change in placement order is ~~not~~
12 ~~required to make~~ from making reasonable efforts with respect to the parent to make it possible
13 for the juvenile to return safely to his or her home, unless the court determines, or a court has
14 determined under a prior order, that such efforts were in the best interests of the juvenile.

NOTE: This SECTION specifies that a change in placement from a JIPS
dispositional order must order that an agency may not make reasonable
efforts to return a juvenile safely home when the statutorily defined
egregious circumstances are found to exist, unless the court determined
that such efforts were in the best interests of the juvenile.

15 **SECTION 18.** 938.363 (1) (a) of the statutes is amended to read:

16 938.363 (1) (a) A juvenile, the juvenile's parent, guardian, or legal custodian, any
17 person or agency bound by a dispositional order, the district attorney or corporation counsel
18 in the county in which the dispositional order was entered or, if the juvenile is an Indian

1 juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
2 juvenile's Indian custodian may request a revision in the order that does not involve a change
3 in placement or a trial reunification, including a revision with respect to the amount of child
4 support to be paid by a parent or a suspension or reinstatement of reasonable efforts under s.
5 938.355 (2) (b) 6. with respect to the parent to make it possible for the juvenile to return safely
6 to his or her home if consistent with the juvenile's permanency plan. The court may also
7 propose a revision. The request or court proposal shall set forth in detail the nature of the
8 proposed revision and what new information is available that affects the advisability of the
9 court's disposition. The request or court proposal shall be submitted to the court. The court
10 shall hold a hearing on the matter prior to any revision of the dispositional order if the request
11 or court proposal indicates that new information is available that affects the advisability of the
12 court's dispositional order, unless written waivers of objections to the revision are signed by
13 all parties entitled to receive notice and the court approves.

NOTE: This SECTION allows the court to suspend, or later reinstate, the portion of a JIPS dispositional order that required an agency to make reasonable efforts with the parent for the juvenile's safe return to the home if consistent with the juvenile's permanency plan. A request for suspension or reinstatement of reasonable efforts must follow the statutory procedures established for revision of a dispositional order, including an evidentiary hearing on the issue of revision of the order.

14 **SECTION 19.** 938.365 (2m) (a) 2. of the statutes is amended to read:

15 938.365 (2m) (a) 2. If the court finds that any of the circumstances under s. 938.355 (2d)
16 (b) 1. to 4. applies with respect to a parent, the order shall ~~include a determination that~~ prohibit
17 the person or agency primarily responsible for providing services to the juvenile ~~is not~~
18 ~~required to make~~ from making reasonable efforts with respect to the parent to make it possible
19 for the juvenile to return safely to his or her home, unless the court determines that such efforts
20 would be in the best interests of the juvenile.

NOTE: This SECTION specifies that in extending a JIPS dispositional order, a court must order that an agency may not make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

1 **SECTION 20.** 938.368 (1) and (2) (intro.) of the statutes are amended to read:

2 938.368 (1) TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. If a petition for termination
3 of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating
4 or denying termination of parental rights is filed during the year in which a dispositional order
5 under s. 938.355 or an extension order under s. 938.365 is in effect, the dispositional or
6 extension order shall remain in effect until all proceedings related to the filing of the petition
7 or an appeal are concluded. A court may suspend an order under s. 938.355 (2) (b) 6., as
8 provided in s. 938.363.

9 (2) PLACEMENT WITH GUARDIAN. (intro.) If a juvenile's placement with a guardian
10 appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent
11 foster placement for the juvenile while a dispositional order under s. 938.345, a revision order
12 under s. 938.363, or an extension order under s. 938.365 is in effect with respect to the juvenile,
13 the dispositional order, revision order, or extension order shall remain in effect, unless an order
14 under s. 938.355 (2) (b) 6. is suspended as provided in s. 938.363, until the earliest of the
15 following:

NOTE: This SECTION specifies that although a JIPS dispositional order continues after the filing of a TPR petition, or a juvenile's placement with a guardian is designated as a permanent foster placement, an order requiring an agency to make reasonable efforts to safely return the juvenile may be suspended.