



State of Wisconsin
2019 - 2020 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 565**

December 6, 2019 - Offered by Representative RAMTHUN.

1 **AN ACT** *to renumber* 48.834 (1); *to amend* 48.355 (1), 48.357 (1) (am) 3., 48.357
2 (2v) (b), 938.357 (1) (am) 3. and 938.357 (2v) (b); and *to create* 48.357 (1) (am)
3 4., 48.357 (2v) (a) 5., 48.833 (4), 48.834 (1) (b), 938.357 (1) (am) 4. and 938.357
4 (2v) (a) 5. of the statutes; **relating to:** placement of a child in an out-of-home
5 placement or with a relative under the Children's Code or the Juvenile Justice
6 Code.

Analysis by the Legislative Reference Bureau

This bill requires the court assigned to exercise jurisdiction under the Children's Code or Juvenile Justice Code (collectively, juvenile court) in a child in need of protection or services (CHIPS) proceeding or a proceeding under the Juvenile Justice Code to make certain findings when placing a child with a relative, and requires that continuing a child's current placement be given a preference under certain circumstances.

The bill requires the juvenile court overseeing a CHIPS proceeding or a proceeding under the Juvenile Justice Code, when changing the placement of a child or juvenile from a foster home or other placement outside the home to another placement outside the home, to make a finding that the change in placement is in the

best interest of the child or juvenile. The bill also states that there is no presumption that removing a child or juvenile from a foster home or other out-of-home placement to place the child or juvenile with a relative other than a parent is in the best interest of the child or juvenile.

The bill provides that, in the case of a child or juvenile who is not an Indian child or juvenile and who has been placed in the home of a foster parent or other physical custodian for nine months or more, if, after a termination of parental rights (TPR) petition is filed, a hearing is held on a proposed change in placement of the child or juvenile to another placement outside the home, the court must give preference to the continued placement of the child or juvenile in his or her current placement over changing the child's or juvenile's placement.

Under current law, whenever a dispositional order is entered in a CHIPS proceeding, if there is no less drastic alternative for a child than transferring custody from the parent, the juvenile court shall consider transferring custody to a relative whenever possible. Under the bill, the juvenile court may transfer custody to a relative only if it is in the best interest of the child.

Under current law, the Department of Children and Families, a county department, or a child welfare agency (collectively, agency) that is the guardian of a child after a parent's parental rights have been terminated may place the child for adoption in a licensed foster home without a court order under certain circumstances. Before doing so, current law requires the agency to consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan or who is otherwise known by the agency. Notwithstanding this requirement, under the bill, in placing for adoption a child who is not an Indian child and who has been placed in the home of a foster parent or other physical custodian for nine months or more, the agency must give preference to placement of the child for adoption in his or her current placement.

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

1 **SECTION 1.** 48.355 (1) of the statutes is amended to read:
2 48.355 (1) **INTENT.** In any order under s. 48.345 or 48.347 the judge shall decide
3 on a placement and treatment finding based on evidence submitted to the judge. The
4 disposition shall employ those means necessary to maintain and protect the
5 well-being of the child or unborn child which are the least restrictive of the rights
6 of the parent and child, of the rights of the parent and child expectant mother or of
7 the rights of the adult expectant mother, and which assure the care, treatment or

1 rehabilitation of the child and the family, of the child expectant mother, the unborn
2 child and the family or of the adult expectant mother and the unborn child, consistent
3 with the protection of the public. When appropriate, and, in cases of child abuse or
4 neglect or unborn child abuse, when it is consistent with the best interest of the child
5 or unborn child in terms of physical safety and physical health, the family unit shall
6 be preserved and there shall be a policy of transferring custody of a child from the
7 parent or of placing an expectant mother outside of her home only when there is no
8 less drastic alternative. If there is no less drastic alternative for a child than
9 transferring custody from the parent, the judge shall consider transferring custody
10 to a relative ~~whenever possible~~ if it is in the best interest of the child.

11 **SECTION 2.** 48.357 (1) (am) 3. of the statutes is amended to read:

12 48.357 (1) (am) 3. If the court changes the child's placement from a placement
13 outside the home to another placement outside the home, the change-in-placement
14 order shall contain the applicable order under sub. (2v) (a) 1m., the applicable
15 statement under sub. (2v) (a) 2., and the ~~finding~~ findings under sub. (2v) (a) 2m. and
16 5. If the court changes the placement of an Indian child who has been removed from
17 the home of his or her parent or Indian custodian from a placement outside that home
18 to another placement outside that home, the change-in-placement order shall, in
19 addition, comply with the order of placement preference under s. 48.028 (7) (b) or, if
20 applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028
21 (7) (e), for departing from that order.

22 **SECTION 3.** 48.357 (1) (am) 4. of the statutes is created to read:

23 48.357 (1) (am) 4. In the case of a child who is not an Indian child and who has
24 been placed in the home of a foster parent or other physical custodian for 9 months
25 or more, if, after a petition for termination of parental rights is filed, a hearing is held

1 on a proposed change in placement of such a child to another placement outside the
2 home, the court shall give preference to the continued placement of the child in his
3 or her current placement over changing the child's placement to the proposed change
4 in placement.

5 **SECTION 4.** 48.357 (2v) (a) 5. of the statutes is created to read:

6 48.357 (2v) (a) 5. If the change in placement would move a child from a foster
7 home or other out-of-home placement with a physical custodian described in s. 48.62
8 (2) to another placement outside the child's home, a finding that removing the child
9 from the foster home or other placement with a physical custodian is in the best
10 interest of the child. In making a finding under this subdivision, there is no
11 presumption that a change in placement from a foster home or other out-of-home
12 placement with a physical custodian to a placement with a relative other than a
13 parent is in the best interest of the child.

14 **SECTION 5.** 48.357 (2v) (b) of the statutes is amended to read:

15 48.357 (2v) (b) *Documentation of basis of findings.* The court shall make the
16 findings specified in par. (a) 1. ~~and, 3., and 5.~~ on a case-by-case basis based on
17 circumstances specific to the child and shall document or reference the specific
18 information on which those findings are based in the change in placement order. A
19 change in placement order that merely references par. (a) 1. ~~or, 3., or 5.~~ without
20 documenting or referencing that specific information in the change in placement
21 order or an amended change in placement order that retroactively corrects an earlier
22 change in placement order that does not comply with this paragraph is not sufficient
23 to comply with this paragraph.

24 **SECTION 6.** 48.833 (4) of the statutes is created to read:

1 48.833 (4) PLACEMENT PREFERENCE. In placing for adoption under sub. (1) or (2)
2 a child who is not an Indian child and who has been placed in the home of a foster
3 parent or other physical custodian for 9 months or more, the department, county
4 department, or child welfare agency shall give preference to placement of the child
5 with that foster parent or other physical custodian.

6 **SECTION 7.** 48.834 (1) of the statutes is renumbered 48.834 (1) (a).

7 **SECTION 8.** 48.834 (1) (b) of the statutes is created to read:

8 48.834 (1) (b) Notwithstanding par. (a), with respect to a child who is not an
9 Indian child and who has been placed in the home of a foster parent or other physical
10 custodian for 9 months or more, the department, county department, or child welfare
11 agency shall give preference to placement of the child under s. 48.833 with that foster
12 parent or physical custodian.

13 **SECTION 9.** 938.357 (1) (am) 3. of the statutes is amended to read:

14 938.357 (1) (am) 3. If the court changes the juvenile's placement from a
15 placement outside the home to another placement outside the home, the
16 change-in-placement order shall contain the applicable order under sub. (2v) (a)
17 1m., the applicable statement under sub. (2v) (a) 2., and the ~~finding~~ findings under
18 sub. (2v) (a) 2m. and 5. If the court changes the placement of an Indian juvenile who
19 has been removed from the home of his or her parent or Indian custodian under s.
20 938.13 (4), (6), (6m), or (7) from a placement outside that home to another placement
21 outside that home, the change-in-placement order shall, in addition, comply with
22 the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028
23 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for
24 departing from that order.

25 **SECTION 10.** 938.357 (1) (am) 4. of the statutes is created to read:

1 938.357 (1) (am) 4. In the case of a juvenile who is not an Indian juvenile and
2 who has been placed in the home of a foster parent or other physical custodian for
3 9 months or more, if, after a petition for termination of parental rights is filed, a
4 hearing is held on a proposed change in placement of such a juvenile to another
5 placement outside the home, the court shall give preference to the continued
6 placement of the juvenile in his or her current placement over changing the juvenile's
7 placement to the proposed change in placement.

8 **SECTION 11.** 938.357 (2v) (a) 5. of the statutes is created to read:

9 938.357 (2v) (a) 5. If the change in placement would move a juvenile from a
10 foster home or other out-of-home placement with a physical custodian described in
11 s. 48.62 (2) to another placement outside the juvenile's home, a finding that removing
12 the juvenile from the foster home or other placement with a physical custodian is in
13 the best interest of the juvenile. In making a finding under this subdivision, there
14 is no presumption that a change in placement from a foster home or other
15 out-of-home placement with a physical custodian to a placement with a relative
16 other than a parent is in the best interest of the juvenile.

17 **SECTION 12.** 938.357 (2v) (b) of the statutes is amended to read:

18 938.357 (2v) (b) *Documentation of basis of findings.* The court shall make the
19 findings under par. (a) 1. ~~and, 3., and 5.~~ on a case-by-case basis based on
20 circumstances specific to the juvenile and shall document or reference the specific
21 information on which those findings are based in the change in placement order. A
22 change in placement order that merely references par. (a) 1. ~~or, 3., or 5.~~ without
23 documenting or referencing that specific information in the change in placement
24 order or an amended change in placement order that retroactively corrects an earlier

1 change in placement order that does not comply with this paragraph is not sufficient
2 to comply with this paragraph.

3 **SECTION 13. Initial applicability.**

4 (1) CHANGE OF PLACEMENT PROCEEDINGS. The treatment of ss. 48.355 (1), 48.357
5 (1) (am) 3. and 4. and (2v) (a) 5. and (b), and 938.357 (1) (am) 3. and 4. and (2v) (a)
6 5. and (b) first applies to a change in placement that is requested on the effective date
7 of this subsection.

8 (END)