



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4509/2
EAW:skw&ahe

2019 ASSEMBLY BILL 565

October 23, 2019 - Introduced by Representatives RAMTHUN, SNYDER, DITTRICH, FELZKOWSKI, HORLACHER, JAMES, KATSMA, KULP, KURTZ, MAGNAFICI, MILROY, MURPHY, MURSAU, TUSLER, THIESFELDT, TRANEL, BORN and TITTL, cosponsored by Senators OLSEN, DARLING and COWLES. Referred to Committee on Family Law.

1 **AN ACT** *to amend* 48.355 (1), 48.355 (2) (cm) 1., 48.357 (1) (am) 3., 48.357 (2v)
2 (b), 48.357 (2v) (d) 1., 938.355 (2) (cm) 1., 938.357 (1) (am) 3., 938.357 (2v) (b)
3 and 938.357 (2v) (d) 1.; and *to create* 48.21 (5) (e) 3., 48.357 (2v) (a) 5., 938.21
4 (5) (e) 3. and 938.357 (2v) (a) 5. of the statutes; **relating to:** placement of a child
5 with a relative under the Children's Code or the Juvenile Justice Code.

Analysis by the Legislative Reference Bureau

This bill limits the timeframe during which a relative of a child may indicate his or her willingness to participate in the care and placement of the child in a child in need of protection or services (CHIPS) proceeding or a proceeding under the Juvenile Justice Code and requires a judge who is placing a child with a relative to make certain findings.

Under current law, when a child or juvenile is removed from his or her home in a CHIPS proceeding or a proceeding under the Juvenile Justice Code, the county department of human services or social services, the Department of Children and Families in Milwaukee County, or the child welfare agency primarily responsible for providing services to the child or juvenile is required to provide a notice to adult relatives, other than a parent, of the child or juvenile advising that relative of his or her options to participate in the care and placement of the child. Under this bill, an adult relative who receives such a notice has no more than four months from receipt of the notice to indicate his or her willingness to participate in the care and placement of the child or juvenile.

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This bill requires a judge who is 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 of the home to another placement outside of 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.

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 judge shall consider transferring custody to a relative whenever possible. Under this bill, the judge may only transfer custody to a relative if it is in the best interest of the child.

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

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

2 48.21 (5) (e) 3. An adult relative who receives notice under subd. 2. has no more
3 than 4 months from the date that he or she received the notice to indicate his or her
4 willingness to participate in the care and placement of the child.

5 **SECTION 2.** 48.355 (1) of the statutes is amended to read:

6 48.355 (1) INTENT. In any order under s. 48.345 or 48.347 the judge shall decide
7 on a placement and treatment finding based on evidence submitted to the judge. The
8 disposition shall employ those means necessary to maintain and protect the
9 well-being of the child or unborn child which are the least restrictive of the rights
10 of the parent and child, of the rights of the parent and child expectant mother or of
11 the rights of the adult expectant mother, and which assure the care, treatment or
12 rehabilitation of the child and the family, of the child expectant mother, the unborn
13 child and the family or of the adult expectant mother and the unborn child, consistent
14 with the protection of the public. When appropriate, and, in cases of child abuse or
15 neglect or unborn child abuse, when it is consistent with the best interest of the child

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1 or unborn child in terms of physical safety and physical health, the family unit shall
2 be preserved and there shall be a policy of transferring custody of a child from the
3 parent or of placing an expectant mother outside of her home only when there is no
4 less drastic alternative. If there is no less drastic alternative for a child than
5 transferring custody from the parent, the judge shall consider transferring custody
6 to a relative ~~whenever possible~~ if it is in the best interest of the child.

7 **SECTION 3.** 48.355 (2) (cm) 1. of the statutes is amended to read:

8 48.355 (2) (cm) 1. Subject to subd. 2., the court shall order the county
9 department, the department in a county having a population of 750,000 or more, or
10 the agency primarily responsible for providing services to the child under the
11 dispositional order to conduct a diligent search in order to locate and provide notice
12 of the information specified in s. 48.21 (5) (e) 2. a. to e. to all relatives of the child
13 named under s. 48.335 (6) and to all adult relatives, as defined in s. 48.21 (5) (e) 1.,
14 of the child within 30 days after the child is removed from the custody of the child's
15 parent unless the child is returned to his or her home within that period. The court
16 may also order the county department, department, or agency to conduct a diligent
17 search in order to locate and provide notice of that information to all other adult
18 individuals named under s. 48.335 (6) within 30 days after the child is removed from
19 the custody of the child's parent unless the child is returned to his or her home within
20 that period. The county department, department, or agency may not provide that
21 notice to a person named under s. 48.335 (6) or to an adult relative if the county
22 department, department, or agency has reason to believe that it would be dangerous
23 to the child or to the parent if the child were placed with that person or adult relative.
24 An adult relative who receives notice under this subdivision has no more than 4

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1 months from the date that he or she received the notice to indicate his or her
2 willingness to participate in the care and placement of the child.

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

4 48.357 (1) (am) 3. If the court changes the child's placement from a placement
5 outside the home to another placement outside the home, the change-in-placement
6 order shall contain the applicable order under sub. (2v) (a) 1m., the applicable
7 statement under sub. (2v) (a) 2., and the ~~finding~~ findings under sub. (2v) (a) 2m. and
8 5. If the court changes the placement of an Indian child who has been removed from
9 the home of his or her parent or Indian custodian from a placement outside that home
10 to another placement outside that home, the change-in-placement order shall, in
11 addition, comply with the order of placement preference under s. 48.028 (7) (b) or, if
12 applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028
13 (7) (e), for departing from that order.

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

15 48.357 (2v) (a) 5. If the change in placement would move a child from a foster
16 home or other out-of-home placement with a physical custodian described in s. 48.62
17 (2) to another placement outside the child's home, a finding that removing the child
18 from the foster home or other placement with a physical custodian is in the best
19 interest of the child. In making a finding under this subdivision, there is no
20 presumption that a change in placement from a foster home or other out-of-home
21 placement with a physical custodian to a placement with a relative other than a
22 parent is in the best interest of the child.

23 **SECTION 6.** 48.357 (2v) (b) of the statutes is amended to read:

24 48.357 (2v) (b) *Documentation of basis of findings.* The court shall make the
25 findings specified in par. (a) 1. ~~and~~, 3., and 5. on a case-by-case basis based on

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1 circumstances specific to the child and shall document or reference the specific
2 information on which those findings are based in the change in placement order. A
3 change in placement order that merely references par. (a) 1. ~~or~~ 3., or 5. without
4 documenting or referencing that specific information in the change in placement
5 order or an amended change in placement order that retroactively corrects an earlier
6 change in placement order that does not comply with this paragraph is not sufficient
7 to comply with this paragraph.

8 **SECTION 7.** 48.357 (2v) (d) 1. of the statutes is amended to read:

9 48.357 (2v) (d) 1. Subject to subd. 2., the court shall order the county
10 department, the department in a county having a population of 750,000 or more, or
11 the agency primarily responsible for implementing the dispositional order to conduct
12 a diligent search in order to locate and provide notice of the information specified in
13 s. 48.21 (5) (e) 2. a. to e. to all relatives of the child named under sub. (1) (c) 2m. or
14 (2m) (bm) and to all adult relatives, as defined in s. 48.21 (5) (e) 1., of the child within
15 30 days after the child is removed from the custody of the child's parent unless the
16 child is returned to his or her home within that period. The court may also order the
17 county department, department, or agency to conduct a diligent search in order to
18 locate and provide notice of that information to all other adult individuals named
19 under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the child is removed from the
20 custody of the child's parent unless the child is returned to his or her home within
21 that period. The county department, department, or agency may not provide that
22 notice to a person named under sub. (1) (c) 2m. or (2m) (bm) or to an adult relative
23 if the county department, department, or agency has reason to believe that it would
24 be dangerous to the child or to the parent if the child were placed with that person
25 or adult relative. An adult relative who receives notice under this subdivision has

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1 no more than 4 months from the date that he or she received the notice to indicate
2 his or her willingness to participate in the care and placement of the child.

3 **SECTION 8.** 938.21 (5) (e) 3. of the statutes is created to read:

4 938.21 (5) (e) 3. An adult relative who receives notice under subd. 2. has no
5 more than 4 months from the date that he or she received the notice to indicate his
6 or her willingness to participate in the care and placement of the juvenile.

7 **SECTION 9.** 938.355 (2) (cm) 1. of the statutes is amended to read:

8 938.355 (2) (cm) 1. Subject to subd. 2., the court shall order the county
9 department or the agency primarily responsible for providing services to the juvenile
10 under the dispositional order to conduct a diligent search in order to locate and
11 provide notice of the information specified in s. 938.21 (5) (e) 2. a. to e. to all relatives
12 of the juvenile named under s. 938.335 (6) and to all adult relatives, as defined in s.
13 938.21 (5) (e) 1., of the juvenile within 30 days after the juvenile is removed from the
14 custody of the juvenile's parent unless the juvenile is returned to his or her home
15 within that period. The court may also order the county department or agency to
16 conduct a diligent search in order to locate and provide notice of that information to
17 all other adult individuals named under s. 938.335 (6) within 30 days after the
18 juvenile is removed from the custody of the juvenile's parent unless the juvenile is
19 returned to his or her home within that period. The county department or agency
20 may not provide that notice to a person named under s. 938.335 (6) or to an adult
21 relative if the county department or agency has reason to believe that it would be
22 dangerous to the juvenile or to the parent if the juvenile were placed with that person
23 or adult relative. An adult relative who receives notice under this subdivision has
24 no more than 4 months from the date that he or she received the notice to indicate
25 his or her willingness to participate in the care and placement of the juvenile.

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1 **SECTION 10.** 938.357 (1) (am) 3. of the statutes is amended to read:

2 938.357 (1) (am) 3. If the court changes the juvenile's placement from a
3 placement outside the home to another placement outside the home, the
4 change-in-placement order shall contain the applicable order under sub. (2v) (a)
5 1m., the applicable statement under sub. (2v) (a) 2., and the ~~finding~~ findings under
6 sub. (2v) (a) 2m. and 5. If the court changes the placement of an Indian juvenile who
7 has been removed from the home of his or her parent or Indian custodian under s.
8 938.13 (4), (6), (6m), or (7) from a placement outside that home to another placement
9 outside that home, the change-in-placement order shall, in addition, comply with
10 the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028
11 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for
12 departing from that order.

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

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

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

23 938.357 (2v) (b) *Documentation of basis of findings.* The court shall make the
24 findings under par. (a) 1. ~~and, 3., and 5.~~ on a case-by-case basis based on
25 circumstances specific to the juvenile and shall document or reference the specific

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1 information on which those findings are based in the change in placement order. A
2 change in placement order that merely references par. (a) 1. ~~or 3.~~ or 5. without
3 documenting or referencing that specific information in the change in placement
4 order or an amended change in placement order that retroactively corrects an earlier
5 change in placement order that does not comply with this paragraph is not sufficient
6 to comply with this paragraph.

7 **SECTION 13.** 938.357 (2v) (d) 1. of the statutes is amended to read:

8 938.357 (2v) (d) 1. Subject to subd. 2., the court shall order the county
9 department or the agency primarily responsible for implementing the dispositional
10 order to conduct a diligent search in order to locate and provide notice of the
11 information specified in s. 938.21 (5) (e) 2. a. to e. to all relatives of the juvenile named
12 under sub. (1) (c) 2m. or (2m) (bm) and to all adult relatives, as defined in s. 938.21
13 (5) (e) 1., of the juvenile within 30 days after the juvenile is removed from the custody
14 of the juvenile's parent unless the juvenile is returned to his or her home within that
15 period. The court may also order the county department or agency to conduct a
16 diligent search in order to locate and provide notice of that information to all other
17 adult individuals named under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the
18 juvenile is removed from the custody of the juvenile's parent unless the juvenile is
19 returned to his or her home within that period. The county department or agency
20 may not provide that notice to a person named under sub. (1) (c) 2m. or (2m) (bm) or
21 to an adult relative if the county department or agency has reason to believe that it
22 would be dangerous to the juvenile or to the parent if the juvenile were placed with
23 that person or adult relative. An adult relative who receives notice under this
24 subdivision has no more than 4 months from the date that he or she received the

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1 notice to indicate his or her willingness to participate in the care and placement of
2 the juvenile.

3 **SECTION 14. Initial applicability.**

4 (1) PARTICIPATION IN CARE AND PLACEMENT OF CHILD OR JUVENILE. The treatment
5 of ss. 48.21 (5) (e) 3., 48.355 (2) (cm) 1., 48.357 (2v) (d) 1., 938.21 (5) (e) 3., 938.355
6 (2) (cm) 1., and 938.357 (2v) (d) 1. first applies to a person who receives the notice
7 under s. 48.21 (5) (e) 3., 48.355 (2) (cm) 1., 48.357 (2v) (d) 1., 938.21 (5) (e) 3., 938.355
8 (2) (cm) 1., or 938.357 (2v) (d) 1. on the effective date of this subsection.

9 (2) FINDINGS IN BEST INTEREST OF THE CHILD. The treatment of ss. 48.355 (1),
10 48.357 (1) (am) 3. and (2v) (a) 5. and (b), and 938.357 (1) (am) 3. and (2v) (a) 5. and
11 (b) first applies to a change in placement that is requested on the effective date of this
12 subsection.

13 (END)