

1       **AN ACT** *to amend* 48.64 (4) (a) of the statutes; **relating to:** fair hearings for head of  
 2           foster, treatment foster, or group home.

*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 adoption and termination of parental rights law.

The bill draft provides that the head of a foster, treatment foster, or group home who receives notice of an appeal of a decision or order issued by an agency that affects the head of the home is a party to that proceeding and provides that the head of the home may examine documents and records that are relevant to the issue of the child’s removal for purposes of such a proceeding.

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

4           48.64 **(4)** (a) Any decision or order issued by an agency that affects the head of a foster,  
 5           treatment foster or group home or the children involved may be appealed to the department  
 6           under fair hearing procedures established under department rules. The department shall, upon  
 7           receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair  
 8           hearing. The department may make such additional investigation as the department considers  
 9           necessary. The department shall give notice of the hearing to the head of the home and to the  
 10          departmental subunit, county department or child welfare agency that issued the decision or  
 11          order. Each person receiving notice is entitled to be represented at the hearing. The head of  
 12          a home who receives notice under sub. (1m) is a party to the proceeding under this paragraph.  
 13          At all hearings conducted under this subsection, the head of the home, or a representative of  
 14          the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to  
 15          examine all documents and records ~~to be used at the hearing~~ relevant to the issue of the child’s

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

**NOTE:** Under current law, any decision or order issued by the department of health and family services (DHFS), the department of corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes that affects the head of a foster, treatment foster, or group

home or the children involved may be appealed to DHFS under fair hearing procedures. DHFS must, upon receipt of an appeal, give the head of the home notice and the opportunity for a fair hearing. At all appeal hearings under this provision, the head of the home, or his or her representative, must have adequate opportunity to examine all documents and records to be used at the hearing.

The bill draft provides that a head of a home who receives notice of a fair hearing is a party to that proceeding. In addition, the bill draft allows the head of the home, or his or her representative, to examine all documents and records, except that DHFS may modify documents and records that are relevant to the child's removal in order to protect the identity of an individual who provided information on the condition that his or her identity remain confidential.