

1 **AN ACT** *to amend* 48.21 (5) (b) 3., 48.32 (1) (b) 2., 48.355 (2) (b) 6r., 48.355 (2d) (b)
 2 (intro.), 48.363 (1) (a), 48.365 (2m) (a) 2., 48.368 (1) and (2) (intro.) and 48.415 (2)
 3 (a) 2. b. of the statutes; **relating to:** reasonable efforts by an agency to return a child
 4 safely home when the child 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. [P.L. 105–89.]

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. This appears to be contrary to ASFA, which specifies that reasonable efforts “shall not” be required in those circumstances.

ASFA also explicitly provides that a state court may not exercise its discretion to protect the health and safety of children under these circumstances, as a court may in other individual cases. [P.L. 105–89, s. 101.]

Under current 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. [s. 48.415 (2), stats.] No exception is made for the egregious circumstances under which reasonable efforts are not required.

Also under current 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 are accepted by the parent or remain consistent with the child’s permanency plan. ASFA requires that if continuation of reasonable efforts for a child to return safely to the home are determined to be inconsistent with the permanency plan for the child, reasonable efforts must then be made to place the child in a timely manner in accordance with the plan and to complete whatever steps are necessary to finalize the child’s permanent placement.

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.
- 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.

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~~ statement that the county department, department, in a county having a
5 population of 500,000 or more, or agency primarily responsible for providing services under
6 the custody order is may not ~~required~~ to make reasonable efforts with respect to the parent to
7 make it possible for the child to return safely to his or her home.

NOTE: This SECTION specifies that at a temporary physical custody
 hearing 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.

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

9 48.32 **(1)** (b) 2. If the judge or circuit court commissioner finds that any of the
10 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
11 consent decree shall include a ~~determination~~ statement that the county department,
12 department, in a county having a population of 500,000 or more, or agency primarily
13 responsible for providing services under the consent decree is may not ~~required~~ to make
14 reasonable efforts with respect to the parent to make it possible for the child to return safely
15 to his or her home.

NOTE: This SECTION specifies that a 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.

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

17 48.355 **(2)** (b) 6r. If the court finds that any of the circumstances specified in sub. (2d)
18 (b) 1. to 5. applies with respect to a parent, a ~~determination~~ statement that the county
19 department, department, in a county having a population of 500,000 or more, or agency

1 primarily responsible for providing services under the court order is may not ~~required to~~ make
2 reasonable efforts with respect to the parent to make it possible for the child to return safely
3 to his or her home.

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

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

5 48.355 (**2d**) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court is ~~not required to~~ shall
6 include in a dispositional order a finding ~~as to whether~~ that the county department, the
7 department, in a county having a population of 500,000 or more, or the agency primarily
8 responsible for providing services under a court order ~~has made~~ may not make reasonable
9 efforts with respect to a parent of a child to prevent the removal of the child from the home,
10 ~~while assuring that the child's health and safety are the paramount concerns,~~ or a finding as
11 ~~to whether~~ that the county department, department, or agency ~~has made~~ may not make
12 reasonable efforts with respect to a parent of a child to achieve the permanency goal of
13 returning the child safely to his or her home, if the court finds any of the following:

NOTE: This SECTION specifies that in 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.

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

15 48.363 (**1**) (a) A child, the child's parent, guardian, legal custodian, or Indian custodian,
16 an expectant mother, an unborn child by the unborn child's guardian ad litem, any person or
17 agency bound by a dispositional order, or the district attorney or corporation counsel in the
18 county in which the dispositional order was entered may request a revision in the order that
19 does not involve a change in placement or a trial reunification, including a revision with

1 respect to the amount of child support to be paid by a parent or a suspension or reinstatement
2 of reasonable efforts under s. 48.355 (2) (b) 6. with respect to the parent to make it possible
3 for the child to return safely to his or her home if consistent with the child's permanency plan.

4 The court may also propose a revision. The request or court proposal shall set forth in detail
5 the nature of the proposed revision and what new information is available that affects the
6 advisability of the court's disposition. The request or court proposal shall be submitted to the
7 court. The court shall hold a hearing on the matter prior to any revision of the dispositional
8 order if the request or court proposal indicates that new information is available which affects
9 the advisability of the court's dispositional order, unless written waivers of objections to the
10 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 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.

11 **SECTION 6.** 48.365 (2m) (a) 2. of the statutes is amended to read:

12 48.365 (2m) (a) 2. If the judge finds that any of the circumstances specified in s. 48.355
13 (2d) (b) 1. to 5. applies with respect to a parent, the order shall include a ~~determination~~
14 statement that the person or agency primarily responsible for providing services to the child
15 is may not be ~~required to~~ make reasonable efforts with respect to the parent to make it possible
16 for the child to return safely to his or her home.

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.

17 **SECTION 7.** 48.368 (1) and (2) (intro.) of the statutes are amended to read:

1 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41 or 48.415
2 or an appeal from a judgment terminating or denying termination of parental rights is filed
3 during the year in which a dispositional order under s. 48.355, an extension order under s.
4 48.365, a voluntary agreement for placement of the child under s. 48.63, or a guardianship
5 order under ch. 880, 2003 stats., or s. 48.977 or ch. 54 is in effect, the dispositional or extension
6 order, voluntary agreement, or guardianship order shall remain in effect until all proceedings
7 related to the filing of the petition or an appeal are concluded. A court may suspend an order
8 under s. 48.355 (2) (b) 6., as provided in s. 48.363.

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

NOTE: This SECTION specifies that although a 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.

15 **SECTION 8.** 48.415 (2) (a) 2. b. of the statutes is amended to read:

16 48.415 (2) (a) 2. b. That the agency responsible for the care of the child and the family
17 or of the unborn child and expectant mother has made a reasonable effort to provide the
18 services ordered by the court, unless the responsible agency is not required under s. 48.355
19 (2d) (b), 48.363 (1) (a), or 48.368 (1) to make reasonable efforts with respect to a parent to
20 make 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 were either not required or were suspended by the court.

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(END)