

1       **AN ACT** *to renumber and amend* 48.355 (2d) (c); *to amend* 48.21 (5) (b) 3., 48.32 (1)  
2           (b) 2., 48.355 (2) (b) 6r., 48.355 (2d) (b) (intro.), 48.363 (1) (a), 48.365 (2m) (a) 2.,  
3           48.368 (1) and (2) (intro.) and 48.415 (2) (a) 2. b.; and *to create* 48.355 (2d) (c) 1. of  
4           the statutes; **relating to:** reasonable efforts by an agency to return a child safely  
5           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 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. [s. 48.415 (2), stats.] 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 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.

**COMMENT:** This version of the draft clarifies the distinction between findings on reasonable efforts that were already made versus a determination and order that reasonable efforts are not required going forward, in the provisions that prohibit a court 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 may not be required.

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.

**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 that an order prohibiting 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 not required to make~~ from  
14       making reasonable efforts with respect to the parent to make it possible for the child to return  
15       safely 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.

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.

**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.

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

9       48.355 (**2d**) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court ~~is not required to~~ shall  
10       include in a dispositional order a ~~finding as to whether~~ determination that the county  
11       department, the department, in a county having a population of 500,000 or more, or the agency  
12       primarily responsible for providing services under a court order ~~has made~~ was not required  
13       to make reasonable efforts with respect to a parent of a child to prevent the removal of the child  
14       from the home, ~~while assuring that the child's health and safety are the paramount concerns,~~  
15       or a ~~finding as to whether~~ determination that the county department, department, or agency  
16       ~~has made~~ was not required to make reasonable efforts with respect to a parent of a child to  
17       achieve the permanency goal of returning the child safely to his or her home, if the court finds  
18       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.

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

3           48.355 (**2d**) (c) If the court finds that any of the circumstances specified in par. (b) 1.  
4 to 5. applies with respect to a parent, the court shall ~~hold~~ do all of the following:

5           2. Hold a hearing under s. 48.38 (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 child.

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

9           48.355 (**2d**) (c) 1. Include in the order an order that the person or agency primarily  
10 responsible for providing services to the child is prohibited from making reasonable efforts  
11 with respect to the parent to make it possible for the child to return safely to his or her home.

**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.

12           **SECTION 7.** 48.363 (1) (a) of the statutes is amended to read:

13           48.363 (**1**) (a) A child, the child's parent, guardian, legal custodian, or Indian custodian,  
14 an expectant mother, an unborn child by the unborn child's guardian ad litem, any person or  
15 agency bound by a dispositional order, or the district attorney or corporation counsel in the  
16 county in which the dispositional order was entered may request a revision in the order that  
17 does not involve a change in placement or a trial reunification, including a revision with  
18 respect to the amount of child support to be paid by a parent or a suspension or reinstatement  
19 of reasonable efforts under s. 48.355 (2) (b) 6. with respect to the parent to make it possible

1 for the child to return safely to his or her home if consistent with the child's permanency plan.

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

9 **SECTION 8.** 48.365 (2m) (a) 2. of the statutes is amended to read:

10 48.365 **(2m)** (a) 2. If the judge finds that any of the circumstances specified in s. 48.355  
11 (2d) (b) 1. to 5. applies with respect to a parent, the order shall ~~include a determination that~~  
12 prohibit the person or agency primarily responsible for providing services to the child is ~~not~~  
13 ~~required to make~~ from making reasonable efforts with respect to the parent to make it possible  
14 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.

15 **SECTION 9.** 48.368 (1) and (2) (intro.) of the statutes are amended to read:

16 48.368 **(1)** If a petition for termination of parental rights is filed under s. 48.41 or 48.415  
17 or an appeal from a judgment terminating or denying termination of parental rights is filed

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

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

13 **SECTION 10.** 48.415 (2) (a) 2. b. of the statutes is amended to read:

14 48.415 (2) (a) 2. b. That the agency responsible for the care of the child and the family  
15 or of the unborn child and expectant mother has made a reasonable effort to provide the  
16 services ordered by the court, unless the responsible agency is not required under s. 48.355  
17 (2) (b) 6r., 48.363 (1) (a), or 48.368 (1) to make reasonable efforts with respect to a parent to  
18 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.

1

(END)