
Wisconsin Legislative Council

AMENDMENT MEMO



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2021 Assembly Bill 26

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1

BACKGROUND

Current law allows a court with jurisdiction under ch. 48, Stats. (the Children's Code), or ch. 938, Stats. (the Juvenile Justice Code), to place a child or juvenile in the home of a parent or other relative, or temporarily in the home of any person who is not licensed, unless the parent, relative, or person has been convicted of first- or second-degree intentional homicide of a parent of the child. In that circumstance, the court may place a child or juvenile with the parent, relative, or person if the court determines by clear and convincing evidence that the placement is in the child's or juvenile's best interest, after considering the child's or juvenile's wishes.

In addition, current law prohibits a court from placing a child or juvenile in certain types of out-of-home care entities, such as foster homes, group homes, shelter care facilities, or the home of a person receiving subsidized guardianship or kinship care payments, unless that entity is licensed. Such licensed entities may not employ or contract with a caregiver, or allow a nonclient resident to reside at the entity, if the entity knows or should have known of certain information, including that a caregiver or nonclient resident has been determined to have abused or neglected a child, or has been convicted of, or adjudicated delinquent for, certain criminal offenses, including various crimes against children.

2021 ASSEMBLY BILL 26

Assembly Bill 26 generally expands the circumstances in which a court is prohibited from placing a child in the home of a relative other than the parent, or temporarily with an unlicensed person, as well as the circumstances in which an entity is prohibited from employing or housing certain individuals.

Specifically, under the bill, the court may not place a child in the home of a relative other than the parent, or temporarily with any unlicensed person, if the judge finds that, for any crime under ch. 948, Stats. (titled Crimes Against Children), the relative or person has done any of the following: (1) been convicted of a crime; (2) pleaded no contest to a crime; or (3) had a criminal charge dismissed or amended as a result of a plea agreement. Like current law, the bill allows an exception to this prohibition when a judge finds, by clear and convincing evidence, that the placement is in the child's best interest, but the bill does not require the court to consider the child's wishes.

The bill also prohibits licensed entities from employing or contracting with a caregiver, or allowing a nonclient resident to reside at the entity, if the entity knows or should have known that the caregiver or nonclient resident has pled no contest to one of the following crimes, or has been charged with any of the following crimes and that charge was dismissed or amended as part of a plea agreement:

- Certain acts of sexual assault of a child, including a child placed in substitute care.
- Certain acts of physical abuse of a child.

- Sexual exploitation or trafficking of a child.
- Causing a child to view or listen to sexual activity.
- Incest with a child.
- Child enticement.
- Patronizing a child, or soliciting a child for prostitution.
- Certain acts of exposing a child to harmful material that constitute a felony.
- Possession of child pornography.
- Child sex offender working with children.
- Neglecting a child, including chronic or repeated acts of neglect.
- Child abduction.
- Child unattended in child care vehicle.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 generally maintains the bill's provisions, but differs in two ways.

First, it narrows the types of crimes that may prohibit a court from placing a child in the home of a relative other than the parent, or temporarily with any unlicensed person. Specifically, under the substitute amendment, such placements are generally prohibited if the relative or unlicensed person has been convicted of, or has pleaded no contest to, or has had a charge dismissed or amended as a result of a plea agreement for one of the crimes specified in the bullet points above, rather than all crimes under ch. 948, Stats., as provided under the bill.

Second, the substitute amendment applies the bill's prohibitions to the placement of a juvenile in the home of a relative other than a parent, or temporarily with any other unlicensed person, under the Juvenile Justice Code. Like the bill, the amendment includes an exception based on certain judicial findings as to the juvenile's best interest, but does not require a judge to consider the juvenile's wishes.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 requires that a judge consider the best interest of an Indian child or juvenile in accordance with the federal Indian Child Welfare Act, when determining whether it is in the child's or juvenile's best interest to allow an otherwise prohibited placement in the home of a relative other than the parent or temporarily with any unlicensed person.

BILL HISTORY

Representative Tittl offered Assembly Substitute Amendment 1 on March 1, 2021, and Assembly Amendment 1 to Assembly Substitute Amendment 1 on March 25, 2021. On March 31, 2021, the Assembly Committee on Children and Families recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1, adoption of Assembly Substitute Amendment 1, as amended, and passage of Assembly Bill 26, as amended, on votes of Ayes, 12; Noes, 0.

AO:jal