



1995 SENATE BILL 354

September 26, 1995 - Introduced by Senators DARLING, RUDE, ZIEN and ANDREA, cosponsored by Representatives VRAKAS, MUSSER, GRONEMUS, HAHN, AINSWORTH, BALDUS, ROBSON, GUNDERSON, KRUSICK, HUTCHISON, HARSDFORF, OTT, ALBERS, SERATTI and SILBAUGH. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.293 (2), 48.295 (1), 48.295 (3), 48.33 (5), 48.355 (2) (b) 2.,
2 48.357 (1), 48.357 (2m) and 48.78 (2) (a) of the statutes; **relating to:** removal
3 of a child from a foster home or treatment foster home.

Analysis by the Legislative Reference Bureau

Under current law, a child, the child's parent, guardian or legal custodian, any person or agency bound by the child's dispositional order or the court assigned to exercise jurisdiction under the children's code (juvenile court) may request a change in placement of a child who is subject to a dispositional order of the juvenile court. Currently, if the person or agency primarily responsible for implementing the dispositional order requests the change in placement, that person or agency must provide a notice to the child and the child's parent, guardian, legal custodian and foster parent stating the reasons for the change in placement, why the new placement is preferable to the current placement and how the new placement satisfies the objectives of the child's treatment plan. A person who receives notice of a change in placement requested by the person or agency responsible for implementing the dispositional order may obtain a hearing on the change in placement by filing an objection, except that no hearing is required for a change in placement authorized in the original dispositional order unless an objecting party alleges that new information is available that affects the advisability of the dispositional order. If a hearing is held and the change in placement would remove the child from a foster home, the foster parent may submit a written statement prior to the hearing.

Current law provides a slightly different procedure for when a party other than the person or agency primarily responsible for implementing the dispositional order requests a change in placement. In that case, the notice must state what new information affects the advisability of the current placement and a hearing must be held unless all parties waive their objections to the change in placement. If a hearing

is held and the change in placement would remove the child from a foster home, the foster parent may file a written statement prior to the hearing.

Under current law, the parties, ordinarily the child, the child's parent, guardian and legal custodian and any person or any agency bound by the child's dispositional order, are entitled to certain procedural rights in connection with a juvenile court proceeding, including a change in placement proceeding. Those rights include the right to be represented by counsel, to inspect and copy, through counsel, all records that are relevant to the proceeding, to request an order requiring the child to undergo a physical, psychological, mental or developmental examination or an alcohol or other drug abuse assessment by an expert, to present evidence, including expert testimony, to confront and cross-examine witnesses and to make alternative recommendations.

This bill expands the rights of foster parents and treatment foster parents in connection with a change in placement proceeding. Specifically, the bill provides that, if a hearing is held and the change in placement would remove the child from a foster home or treatment foster home in which the child has been placed for a total of 2 or more years, the foster parent or treatment foster parent may be represented by counsel, may inspect and copy, through counsel, all records that are relevant to the proceeding, may request that the child be examined or assessed by an expert of the foster parent's or treatment foster parent's own choosing, may present evidence, including expert testimony, may confront and cross-examine witnesses and may present alternative placement recommendations.

The bill also changes the standard for reviewing a change in placement request by eliminating the requirement that the request for a change in placement show why the new placement is preferable to the current placement and instead requiring the request to show why the new placement would be in the best interests of the child. Finally, the bill expands the scope of a change in placement inquiry by eliminating the requirement that the request state what *new* information is available that affects the advisability of the current placement and instead requiring the request to state what information, new or old, is available that affects the advisability of the current placement.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 48.293 (2) of the statutes is amended to read:
- 2 48.293 (2) All records relating to a child which are relevant to the subject
- 3 matter of a proceeding under this chapter shall be open to inspection by a guardian
- 4 ad litem or counsel for any party, upon demand and upon presentation of releases

1 where necessary, at least 48 hours before the proceeding. Persons entitled to inspect
2 the records may obtain copies of the records with the permission of the custodian of
3 the records or with permission of the court. The court may instruct counsel not to
4 disclose specified items in the materials to the child ~~or~~ the parent or any other party
5 if the court reasonably believes that the disclosure would be harmful to the interests
6 of the child. Sections 971.23 to 971.25 and 972.11 (5) shall be applicable in all
7 delinquency proceedings under this chapter except the court shall establish the
8 timetable for ss. 971.23 (3), (8) and (9) and 972.11 (5).

9 **SECTION 2.** 48.295 (1) of the statutes is amended to read:

10 48.295 (1) After the filing of a petition and upon a finding by the court that
11 reasonable cause exists to warrant an examination or an alcohol and other drug
12 abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court
13 may order any child coming within its jurisdiction to be examined as an outpatient
14 by personnel in an approved treatment facility for alcohol and other drug abuse, by
15 a physician, psychiatrist or licensed psychologist, or by another expert appointed by
16 the court holding at least a masters degree in social work or another related field of
17 child development, in order that the child's physical, psychological, alcohol or other
18 drug dependency, mental or developmental condition may be considered. The court
19 may also order an examination or an alcohol and other drug abuse assessment that
20 conforms to the criteria specified under s. 48.547 (4) of a parent, guardian or legal
21 custodian whose ability to care for a child is at issue before the court. The court shall
22 hear any objections by the child, the child's parents, guardian or legal custodian or
23 any other party to the request for such an examination or assessment before ordering
24 the examination or assessment. The expenses of an examination, if approved by the
25 court, shall be paid by the county of the court ordering the examination. The

1 payment for an alcohol and other drug abuse assessment shall be in accordance with
2 s. 48.361.

3 **SECTION 3.** 48.295 (3) of the statutes is amended to read:

4 48.295 (3) If the child ~~or~~, a parent or any other party objects to a particular
5 physician, psychiatrist, licensed psychologist or other expert as required under this
6 section, the court shall appoint a different physician, psychiatrist, psychologist or
7 other expert as required under this section.

8 **SECTION 4.** 48.33 (5) of the statutes is amended to read:

9 48.33 (5) IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT;
10 CONFIDENTIALITY. If the report recommends placement in a foster home or a treatment
11 foster home, and the name of the foster parent or treatment foster parent is not
12 available at the time the report is filed, the agency shall provide the court and the
13 child's parent or guardian with the name and address of the foster parent or
14 treatment foster parent within 21 days after the dispositional order is entered,
15 except that the court may order the information withheld from the child's parent ~~or~~;
16 guardian or any other party if the court finds that disclosure would result in
17 imminent danger to the child or to the foster parent or treatment foster parent. After
18 notifying the child's parent or guardian, the court shall hold a hearing prior to
19 ordering the information withheld.

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

21 48.355 (2) (b) 2. If the child is placed outside the home, the name of the place
22 or facility, including transitional placements, where the child shall be cared for or
23 treated, except that if the placement is a foster home or treatment foster home and
24 the name and address of the foster parent or treatment foster parent is not available
25 at the time of the order, the name and address of the foster parent or treatment foster

1 parent shall be furnished to the court and the parent within 21 days of the order. If,
2 after a hearing on the issue with due notice to the parent or guardian, the judge finds
3 that disclosure of the identity of the foster parent or treatment foster parent would
4 result in imminent danger to the child, the foster parent or the treatment foster
5 parent, the judge may order the name and address of the prospective foster parents
6 or treatment foster parents withheld from the parent ~~or~~ guardian or any other party.

7 **SECTION 6.** 48.357 (1) of the statutes is amended to read:

8 48.357 (1) The person or agency primarily responsible for implementing the
9 dispositional order may request a change in the placement of the child, whether or
10 not the change requested is authorized in the dispositional order and shall cause
11 written notice to be sent to the child or the child's counsel or guardian ad litem,
12 parent, foster parent, treatment foster parent, guardian and legal custodian. The
13 notice shall contain the name and address of the new placement, the reasons for the
14 change in placement, a statement describing why the new placement is ~~preferable~~
15 ~~to the present placement~~ would be in the best interests of the child and a statement
16 of how the new placement satisfies objectives of the treatment plan ordered by the
17 court. Any person receiving the notice under this subsection or notice of the specific
18 foster or treatment foster placement under s. 48.355 (2) (b) 2. may obtain a hearing
19 on the matter by filing an objection with the court within 10 days of receipt of the
20 notice. Placements shall not be changed until 10 days after such notice is sent to the
21 court unless the parent, guardian or legal custodian and the child, if 12 or more years
22 of age, sign written waivers of objection, except that placement changes which were
23 authorized in the dispositional order may be made immediately if notice is given as
24 required in this subsection. In addition, a hearing is not required for placement
25 changes authorized in the dispositional order except where an objection filed by a

1 person who received notice alleges that new information is available which affects
2 the advisability of the court's dispositional order. If a hearing is held under this
3 subsection and the change in placement would remove a child from a foster home or
4 treatment foster home, the foster parent or treatment foster parent may submit a
5 written statement prior to the hearing. If a hearing is held under this subsection and
6 the change in placement would remove a child from a foster home or treatment foster
7 home in which the child has been placed for a total of 2 or more years, the foster
8 parent or treatment foster parent may be represented by counsel, may request an
9 examination or assessment of the child under s. 48.295 by an expert of the foster
10 parent's or treatment foster parent's own choosing, may present evidence relative to
11 the issue of placement, including expert testimony, may confront and cross-examine
12 witnesses and may make alternative placement recommendations. In addition,
13 counsel for the foster parent or treatment foster parent may, notwithstanding s.
14 48.78 (2) (a), inspect and obtain copies of all records relating to the child that are
15 relevant to the issue of placement as provided under s. 48.293.

16 **SECTION 7.** 48.357 (2m) of the statutes is amended to read:

17 48.357 (2m) The child, parent, guardian, legal custodian or any person or
18 agency primarily bound by the dispositional order, other than the person or agency
19 responsible for implementing the order, may request a change in placement under
20 this subsection. The request shall contain the name and address of the place of the
21 new placement requested and shall state what new information is available which
22 affects the advisability of the current placement and why the new placement would
23 be in the best interests of the child. This request shall be submitted to the court. In
24 addition, the court may propose a change in placement on its own motion. The court
25 shall hold a hearing on the matter prior to ordering any change in placement under

1 this subsection if the request states that new information is available which affects
2 the advisability of the current placement, unless written waivers of objection to the
3 proposed change in placement are signed by all parties entitled to receive notice
4 under sub. (1) and the court approves. If a hearing is scheduled, the court shall notify
5 the child, parent, foster parent, treatment foster parent, guardian, legal custodian
6 and all parties who are bound by the dispositional order at least 3 days prior to the
7 hearing. A copy of the request or proposal for the change in placement shall be
8 attached to the notice. If all the parties consent, the court may proceed immediately
9 with the hearing. If a hearing is held under this subsection and the change in
10 placement would remove a child from a foster home or treatment foster home, the
11 foster parent or treatment foster parent may submit a written statement prior to the
12 hearing. If a hearing is held under this subsection and the change in placement
13 would remove a child from a foster home or treatment foster home in which the child
14 has been placed for a total of 2 or more years, the foster parent or treatment foster
15 parent may be represented by counsel, may request an examination or assessment
16 of the child under s. 48.295 by an expert of the foster parent's or treatment foster
17 parent's own choosing, may present evidence relative to the issue of placement,
18 including expert testimony, may confront and cross-examine witnesses and may
19 make alternative placement recommendations. In addition, counsel for the foster
20 parent or treatment foster parent may, notwithstanding s. 48.78 (2) (a), inspect and
21 obtain copies of all records relating to the child that are relevant to the issue of
22 placement as provided under s. 48.293.

23 **SECTION 8.** 48.78 (2) (a) of the statutes is amended to read:

24 48.78 (2) (a) No agency may make available for inspection or disclose the
25 contents of any record kept or information received about an individual in its care

1 or legal custody, except as provided under sub. (3) or s. 48.357 (1) or (2m), 48.371,
2 48.38 (5) (b) or (d), 48.432, 48.433, 48.93 or 48.981 (7) or by order of the court.

3 **SECTION 9. Initial applicability.**

4 (1) This act first applies to hearings under section 48.357 (1) or (2m) of the
5 statutes, as affected by this act, held on the effective date of this subsection.

6 (END)