



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs0158/1
EAW:amn

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 562**

1 **AN ACT** *to renumber and amend* 48.357 (2r), 48.437 (2r), 48.64 (4) (a), 48.64 (4)
2 (c) and 938.357 (2r); *to amend* 48.293 (2), 48.295 (1), 48.295 (3), 48.357 (1) (am)
3 2. a., 48.357 (1) (am) 3., 48.357 (2m) (am) 2., 48.357 (2m) (c) 2., 48.396 (3) (b) 1.,
4 48.396 (3) (c) 1m., 48.437 (1) (c), 48.437 (2r) (title), 48.78 (2) (a), 938.293 (2),
5 938.295 (1) (b), 938.295 (3), 938.396 (2m) (b) 1., 938.396 (2m) (c) 1m. and 938.78
6 (2) (a); and *to create* 48.357 (2r) (b), 48.437 (2r) (b), 48.64 (4) (a) 2. and 3., 48.64
7 (4) (c) 3. and 4. and 938.357 (2r) (b) of the statutes; **relating to:** the rights of
8 a foster parent or other physical custodian of a child on removal of the child from
9 the person's home and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill changes the rights of a foster parent or other physical custodian in a proceeding for a change of placement under the Children's Code and the Juvenile Justice Code.

Under current law, a child who is subject to a dispositional order of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice

Code (juvenile court), the child's parent, guardian, or legal custodian, or any agency bound by the dispositional order may request a change in placement of the child. Currently, if the agency requests the change in placement, the agency must provide notice to the child, the child's parent, guardian, and legal custodian, and the child's foster parent, treatment foster parent, or other physical custodian 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 such a change in placement may obtain a hearing on the change in placement by filing an objection to the change in placement.

Current law provides a slightly different procedure for when the child or the child's parent, guardian, or legal custodian 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.

Finally, under current law, when an agency is appointed the guardian of a child after parental rights are terminated and the district attorney or corporation counsel requests a change in placement, the juvenile court may decide whether to hold a hearing on the change in placement.

Under any of these three procedures, if a hearing is held and the change in placement would remove the child from a foster home or from the home of another physical custodian, the juvenile court must give the foster parent or other physical custodian the right to be heard by permitting that person to make a written or oral statement at the hearing or to submit a written statement prior to the hearing relating to the child and to the change in placement. Current law specifies that a foster parent is not a party to a proceeding solely on the basis of receiving notice of the proceeding and the right to be heard.

This bill expands the rights of a foster parent or other physical custodian 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 from the home of another physical custodian in which the child has been placed for six months or more, the foster parent or other physical custodian is a party to the proceeding and, as a party, may be represented by counsel, may inspect and copy, through counsel, all records relating to the child, may request that the child be examined or assessed by an expert of the foster parent's, treatment foster parent's, or other physical custodian's own choosing, and has the right to present evidence, including expert testimony, to confront and cross-examine witnesses, and to present alternative placement recommendations.

Also, under current law, any decision or order issued by an agency that affects the head of a foster home or group home, the head of the home of a relative other than a parent in which a child is placed, or the child involved may be appealed to the Department of Children and Families under fair hearing procedures. Under those procedures, the head of the home is entitled to be represented by counsel, to examine documents and records, to bring witnesses, to confront and cross-examine adverse witnesses, and to have judicial review of DCF's decision.

In addition, under current law, an interested party may file a petition with the circuit court for the county where a child is placed alleging that a decision or order of the agency supervising the child's placement is not in the best interests of the child. On receipt of a petition, the circuit court may call a hearing for the purpose of reviewing the decision or order. If the child is placed in a foster home or in the home of a relative other than a parent, the foster parent or relative may present relevant evidence at the hearing.

This bill makes the rights of the head of a foster home or home of a relative other than a parent in connection with an appeal of an agency decision or order removing a child from the person's home consistent with the rights of a foster parent or other physical custodian in connection with a change-in-placement proceeding. Specifically, the bill provides that, if the head of a foster home or home of a relative other than a parent in which a child has been placed for six months or more appeals an agency decision affecting the head of the home to DCF or files a petition with the circuit court requesting the circuit court to review the agency decision or order, the head of the home is a party to the proceeding and, as a party, may be represented by counsel, may inspect and copy, through counsel, all records relating to the child, may request that the child be examined or assessed by an expert of his or her own choosing, and has the right to present evidence, including expert testimony, to confront and cross-examine witnesses, and to present alternative placement recommendations.

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, or to an unborn child and the unborn
3 child's expectant mother, that are relevant to the subject matter of a proceeding
4 under this chapter shall be open to inspection by a guardian ad litem or counsel for
5 any party ~~and to inspection,~~ by the court-appointed special advocate for the child,
6 or by counsel for any foster parent or other physical custodian described in s. 48.357
7 (2r) (b), 48.437 (2r) (b), or 48.64 (4) (a) 2. or (c) 3., upon demand and upon presentation
8 of releases when necessary, at least 48 hours before the proceeding. Persons entitled
9 to inspect the records may obtain copies of the records with the permission of the
10 custodian of the records or with permission of the court. The court may instruct
11 counsel, a guardian ad litem, or a court-appointed special advocate not to disclose

1 specified items in the ~~materials~~ records to the child ~~or~~, the parent, ~~or~~ to the expectant
2 mother, or the child's foster parent or other physical custodian described in s. 48.357
3 (2r) (b), 48.437 (2r) (b), or 48.64 (4) (a) 2. or (c) 3. if the court reasonably believes that
4 the disclosure would be harmful to the interests of the child or the unborn child.

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

6 48.295 (1) After the filing of a petition and upon a finding by the court that
7 reasonable cause exists to warrant a physical, psychological, mental, or
8 developmental examination or an alcohol and other drug abuse assessment that
9 conforms to the criteria specified under s. 48.547 (4), the court may order any child
10 coming within its jurisdiction to be examined as an outpatient by personnel in an
11 approved treatment facility for alcohol and other drug abuse, by a physician,
12 psychiatrist or licensed psychologist, or by another expert appointed by the court
13 holding at least a master's degree in social work or another related field of child
14 development, in order that the child's physical, psychological, alcohol or other drug
15 dependency, mental, or developmental condition may be considered. The court may
16 also order a physical, psychological, mental, or developmental examination or an
17 alcohol and other drug abuse assessment that conforms to the criteria specified
18 under s. 48.547 (4) of a parent, guardian, or legal custodian whose ability to care for
19 a child is at issue before the court or of an expectant mother whose ability to control
20 her use of alcohol beverages, controlled substances, or controlled substance analogs
21 is at issue before the court. The court shall hear any objections by the child ~~or~~, the
22 child's parents, guardian, or legal custodian, or the child's foster parent or other
23 physical custodian described in s. 48.357 (2r) (b), 48.437 (2r) (b), or 48.64 (4) (a) 2. or
24 (c) 3. to the request for such an examination or assessment before ordering the
25 examination or assessment. The expenses of an examination, if approved by the

1 court, shall be paid by the county of the court ordering the examination in a county
2 having a population of less than 750,000 or by the department in a county having a
3 population of 750,000 or more. The payment for an alcohol and other drug abuse
4 assessment shall be in accordance with s. 48.361.

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

6 48.295 (3) If the child, the child's parent ~~or~~, the expectant mother, or the child's
7 foster parent or other physical custodian described in s. 48.357 (2r) (b), 48.437 (2r)
8 (b), or 48.64 (4) (a) 2. or (c) 3. objects to a particular physician, psychiatrist, licensed
9 psychologist or other expert as required under this section, the court shall appoint
10 a different physician, psychiatrist, psychologist or other expert as required under
11 this section.

12 **SECTION 4.** 48.357 (1) (am) 2. a. of the statutes is amended to read:

13 48.357 (1) (am) 2. a. By the parent, guardian, legal custodian, ~~or~~ Indian
14 custodian, the foster parent or other physical custodian described in sub. (2r) (b), the
15 child, if 12 years of age or over, and the child's tribe, if the child is an Indian child who
16 has been removed from the home of his or her parent or Indian custodian.

17 **SECTION 5.** 48.357 (1) (am) 3. of the statutes is amended to read:

18 48.357 (1) (am) 3. If the court changes the child's placement from a placement
19 outside the home to another placement outside the home, the change-in-placement
20 order shall contain the applicable order under sub. (2v) (a) 1m., the applicable
21 statement under sub. (2v) (a) 2., and the finding under sub. (2v) (a) 2m. If the court
22 changes the placement of an Indian child who has been removed from the home of
23 his or her parent or Indian custodian from a placement outside that home to another
24 placement outside that home, the change-in-placement order shall, in addition,
25 comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable,

1 s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e),
2 for departing from that order. The amount of time that the child has spent with a
3 foster parent or other physical custodian is not, on its own, good cause for departing
4 from the order of placement preference under s. 48.028 (7) (b) or (c).

5 **SECTION 6.** 48.357 (2m) (am) 2. of the statutes is amended to read:

6 48.357 **(2m)** (am) 2. If the proposed change in placement would change the
7 placement of an Indian child placed outside the home of his or her parent or Indian
8 custodian to another placement outside that home, a request under par. (a) shall also
9 contain a statement as to whether the new placement is in compliance with the order
10 of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and,
11 if the new placement is not in compliance with that order, specific information
12 showing good cause, as described in s. 48.028 (7) (e), for departing from that order.
13 The amount of time that the child has spent with a foster parent or other physical
14 custodian is not, on its own, good cause for departing from the order of placement
15 preference under s. 48.028 (7) (b) or (c).

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

17 48.357 **(2m)** (c) 2. If the court changes the child's placement from a placement
18 outside the home to another placement outside the home, the change-in-placement
19 order shall contain the applicable order under sub. (2v) (a) 1m., the applicable
20 statement under sub. (2v) (a) 2., and the finding under sub. (2v) (a) 2m. If the court
21 changes the placement of an Indian child from a placement outside the home of his
22 or her parent or Indian custodian to another placement outside that home, the
23 change-in-placement order shall, in addition, comply with the order of placement
24 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court
25 finds good cause, as described in s. 48.028 (7) (e), for departing from that order. The

1 amount of time that the child has spent with a foster parent or other physical
2 custodian is not, on its own, good cause for departing from the order of placement
3 preference under s. 48.028 (7) (b) or (c).

4 **SECTION 8.** 48.357 (2r) of the statutes is renumbered 48.357 (2r) (a) and
5 amended to read:

6 48.357 (2r) (a) If a hearing is held under sub. (1) (am) 2. or (2m) (b) 1. and the
7 change in placement would remove a child from a foster home or other placement
8 with a physical custodian described in s. 48.62 (2) in which the child has been placed
9 for less than 6 months, the court shall give the foster parent or other physical
10 custodian a right to be heard at the hearing by permitting the foster parent or other
11 physical custodian to make a written or oral statement during the hearing or to
12 submit a written statement prior to the hearing relating to the child and the
13 requested change in placement. A foster parent or other physical custodian
14 described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (am) 1. or (2m)
15 (b) 2. and a right to be heard under this ~~subsection~~ paragraph does not become a party
16 to the proceeding on which the hearing is held solely on the basis of receiving that
17 notice and right to be heard.

18 **SECTION 9.** 48.357 (2r) (b) of the statutes is created to read:

19 48.357 (2r) (b) 1. If a hearing is held under sub. (1) (am) 2. or (2m) (b) 1. and
20 the change in placement would remove a child from a foster home or other placement
21 with a physical custodian described in s. 48.62 (2) in which the child has been placed
22 for 6 months or more, the foster parent or other physical custodian is a party to the
23 proceeding and, as a party, may be represented by counsel and has the right to be
24 heard as described in par. (a), to request an examination or assessment of the child
25 under s. 48.295 by an expert of the foster parent's or other physical custodian's own

1 choosing, to present evidence relative to the issue of placement, including expert
2 testimony, to confront and cross-examine witnesses, and to make alternative
3 placement recommendations.

4 2. If the proposed change in placement would remove an Indian child from a
5 foster home or other placement with a physical custodian described in s. 48.62 (2),
6 the foster parent or other physical custodian may not make an alternative placement
7 recommendation in the proceeding unless the alternative placement
8 recommendation complies with the order of placement preference under s. 48.028 (7)
9 (b) or, if applicable, s. 48.028 (7) (c) or, if the alternative placement recommendation
10 does not comply with that order, the foster parent or other physical custodian shall
11 provide specific information showing good cause, as described in s. 48.028 (7) (e), for
12 departing from that order. The amount of time that the child has spent with the
13 foster parent or other physical custodian is not, on its own, good cause for departing
14 from the order of placement preference under s. 48.028 (7) (b) or (c).

15 3. Counsel for the foster parent or other physical custodian may inspect and
16 obtain copies of all records relating to the child as provided under s. 48.293. If counsel
17 for the foster parent or other physical custodian discloses a record to the foster parent
18 or other physical custodian, counsel shall advise that person that the information
19 contained in the record is confidential and may be disclosed only for the purpose of
20 participating in the change-in-placement proceeding.

21 **SECTION 10.** 48.396 (3) (b) 1. of the statutes is amended to read:

22 48.396 (3) (b) 1. The court shall make information relating to proceedings
23 under this chapter that is contained in the electronic records of the court available
24 to any other court assigned to exercise jurisdiction under this chapter and ch. 938,
25 a municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal

1 jurisdiction, a person representing the interests of the public under s. 48.09 or
2 938.09, an attorney or guardian ad litem for a parent or child who is a party to a
3 proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 938,
4 or an attorney for a foster parent or other physical custodian described in s. 48.357
5 (2r) (b), 48.437 (2r) (b), or 48.64 (4) (a) 2. or (c) 3. or a municipal court, a district
6 attorney prosecuting a criminal case, the department, or a county department under
7 s. 46.215, 46.22, or 46.23, regardless of whether the person to whom the information
8 is transferred is a party to or is otherwise involved in the proceedings in which the
9 electronic records containing that information were created. The director of state
10 courts may use the circuit court automated information systems established under
11 s. 758.19 (4) to make information contained in the electronic records of the court
12 available as provided in this subdivision.

13 **SECTION 11.** 48.396 (3) (c) 1m. of the statutes is amended to read:

14 48.396 (3) (c) 1m. A person representing the interests of the public under s.
15 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party
16 to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch.
17 938, or an attorney for a foster parent or other physical custodian described in s.
18 48.357 (2r) (b), 48.437 (2r) (b), or 48.64 (4) (a) 2. or (c) 3. or a municipal court, or a
19 district attorney prosecuting a criminal case shall keep any information made
20 available to that person under par. (b) 1. confidential and may use or allow access to
21 that information only for the purpose of performing his or her official duties relating
22 to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch.
23 938, a municipal court, or a court of criminal jurisdiction. That person may allow that
24 access regardless of whether the person who is allowed that access is a party to or

1 is otherwise involved in the proceedings in which the electronic records containing
2 that information were created.

3 **SECTION 12.** 48.437 (1) (c) of the statutes is amended to read:

4 48.437 (1) (c) *Contents of order.* The change-in-placement order shall contain
5 the applicable order under sub. (2v) (a), the applicable statement under sub. (2v) (b),
6 and the finding under sub. (2v) (c). If the court changes the placement of an Indian
7 child who has been removed from the home of his or her parent or Indian custodian,
8 the change-in-placement order shall, in addition, comply with the order of
9 placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless
10 the court finds good cause, as described in s. 48.028 (7) (e), for departing from that
11 order. The amount of time that the child has spent with a foster parent or other
12 physical custodian is not, on its own, good cause for departing from the order of
13 placement preference under s. 48.028 (7) (b) or (c).

14 **SECTION 13.** 48.437 (2r) (title) of the statutes is amended to read:

15 48.437 (2r) (title) ~~REMOVAL FROM FOSTER HOME, SUSTAINING PARENT, OR OTHER~~
16 ~~PHYSICAL CUSTODIAN.~~

17 **SECTION 14.** 48.437 (2r) of the statutes is renumbered 48.437 (2r) (a) and
18 amended to read:

19 48.437 (2r) (a) If a hearing is held under sub. (1) (bm) and the change in
20 placement would remove a child from a foster home or other placement with a
21 physical custodian described in s. 48.62 (2) in which the child has been placed for less
22 than 6 months, the court shall give the foster parent or other physical custodian a
23 right to be heard at the hearing by permitting the foster parent or other physical
24 custodian to make a written or oral statement during the hearing or to submit a
25 written statement prior to the hearing relating to the child and the requested change

1 in placement. A foster parent or other physical custodian described in s. 48.62 (2)
2 who receives notice of a hearing under sub. (1) (bm) and a right to be heard under this
3 ~~subsection~~ paragraph does not become a party to the proceeding on which the
4 hearing is held solely on the basis of receiving that notice and right to be heard.

5 **SECTION 15.** 48.437 (2r) (b) of the statutes is created to read:

6 48.437 (2r) (b) 1. If a hearing is held under sub. (1) (bm) and the change in
7 placement would remove a child from a foster home or other placement with a
8 physical custodian described in s. 48.62 (2) in which the child has been placed for 6
9 months or more, the foster parent or other physical custodian is a party to the
10 proceeding and, as a party, may be represented by counsel and has the right to be
11 heard as described in par. (a), to request an examination or assessment of the child
12 under s. 48.295 by an expert of the foster parent's or other physical custodian's own
13 choosing, to present evidence relative to the issue of placement, including expert
14 testimony, to confront and cross-examine witnesses, and to make alternative
15 placement recommendations.

16 2. If the proposed change in placement would remove an Indian child from a
17 foster home or other placement with a physical custodian described in s. 48.62 (2),
18 the foster parent or other physical custodian may not make an alternative placement
19 recommendation in the proceeding unless the alternative placement
20 recommendation complies with the order of placement preference under s. 48.028 (7)
21 (b) or, if applicable, s. 48.028 (7) (c) or, if the alternative placement recommendation
22 does not comply with that order, the foster parent or other physical custodian shall
23 provide specific information showing good cause, as described in s. 48.028 (7) (e), for
24 departing from that order. The amount of time that the child has spent with the

1 foster parent or other physical custodian is not, on its own, good cause for departing
2 from the order of placement preference under s. 48.028 (7) (b) or (c).

3 3. Counsel for the foster parent or other physical custodian may inspect and
4 obtain copies of all records relating to the child as provided under s. 48.293. If counsel
5 for the foster parent or other physical custodian discloses a record to the foster parent
6 or other physical custodian, counsel shall advise that person that the information
7 contained in the record is confidential and may be disclosed only for the purpose of
8 participating in the change-in-placement proceeding.

9 **SECTION 16.** 48.64 (4) (a) of the statutes is renumbered 48.64 (4) (a) 1. and
10 amended to read:

11 48.64 (4) (a) 1. Except as provided in par. (d), any decision or order issued by
12 an agency that affects the head of a foster home or group home, the head of the home
13 of a relative other than a parent in which a child is placed, or the child involved may
14 be appealed to the department under fair hearing procedures established under
15 rules promulgated by the department. Upon receipt of an appeal, the department
16 shall give the head of the home reasonable notice and an opportunity for a fair
17 hearing. The department may make any additional investigation that the
18 department considers necessary. The department shall give notice of the hearing to
19 the head of the home and to the departmental subunit, county department, or child
20 welfare agency that issued the decision or order. Each person receiving notice of the
21 hearing is entitled to be represented at the hearing. ~~At all hearings conducted under~~
22 ~~this paragraph, the head of the home, or a representative of the head of the home,~~
23 ~~shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all~~
24 ~~documents and records to be used at the hearing at a reasonable time before the date~~
25 ~~of the hearing as well as during the hearing, to bring witnesses, to establish all~~

1 ~~pertinent facts and circumstances, and to question or refute any testimony or~~
2 ~~evidence, including an opportunity to confront and cross-examine adverse~~
3 ~~witnesses.~~

4 4. The department shall grant a continuance for a reasonable period of time
5 when an issue is raised for the first time during a hearing. This requirement may
6 be waived with the consent of the parties. The decision of the department shall be
7 based exclusively on evidence introduced at the hearing. A transcript of testimony
8 and exhibits, or an official report containing the substance of what transpired at the
9 hearing, together with all papers and requests filed in the proceeding, and the
10 findings of the hearing examiner shall constitute the exclusive record for decision by
11 the department. The department shall make the record available at any reasonable
12 time and at an accessible place to the head of the home or his or her representative.
13 Decisions by the department shall specify the reasons for the decision and identify
14 the supporting evidence. No person participating in an agency action being appealed
15 may participate in the final administrative decision on that action. The department
16 shall render its decision as soon as possible after the hearing and shall send a
17 certified copy of its decision to the head of the home and to the departmental subunit,
18 county department, or child welfare agency that issued the decision or order. The
19 decision shall be binding on all parties concerned.

20 **SECTION 17.** 48.64 (4) (a) 2. and 3. of the statutes are created to read:

21 48.64 (4) (a) 2. The head of a foster home or the head of the home of a relative
22 other than a parent who receives notice of intent to remove the child under sub. (1m)
23 and who requests a hearing under subd. 1. is a party to the proceeding under this
24 paragraph and, as a party, may be represented by counsel and has the right to be
25 heard, to request an examination or assessment of the child as provided in s. 48.295

1 by an expert of his or her own choosing, to present evidence relative to the issue of
2 placement, including expert testimony, to confront and cross-examine witnesses,
3 and to make alternative placement recommendations. If the child is an Indian child,
4 any alternative placement recommendations shall comply with s. 48.028 (7) (b) or (c),
5 whichever is applicable. The amount of time that a child has spent in a foster home
6 or home of a relative other than a parent is not, on its own, good cause for departing
7 from the order of placement preference under s. 48.028 (7) (b) or (c).

8 3. Counsel for the head of the foster home or for the head of the home of the
9 relative other than a parent may inspect and obtain copies of all records relating to
10 the child as provided under s. 48.293. If counsel for the head of the foster home or
11 for the head of the home of the relative other than a parent discloses a record to the
12 head of the foster home or to the head of the home of the relative other than a parent,
13 counsel shall advise him or her that the information contained in the record is
14 confidential and may be disclosed only for the purpose of participating in the
15 proceeding under this paragraph.

16 **SECTION 18.** 48.64 (4) (c) of the statutes is renumbered 48.64 (4) (c) 1. and
17 amended to read:

18 48.64 (4) (c) 1. Except as provided in par. (d), the circuit court for the county
19 where the dispositional order placing a child in a foster home or group home or in the
20 home of a relative other than a parent was entered or the voluntary agreement under
21 s. 48.63 placing a child in a foster home or group home was made has jurisdiction
22 upon petition of any interested party over the child who is placed in the foster home,
23 group home, or home of the relative. The

24 2. Subject to subd. 3., the circuit court may call a hearing, at which the head
25 of the home and the supervising agency under sub. (2) shall be present, for the

1 purpose of reviewing any decision or order of that agency involving the placement
2 and care of the child. If the child has been placed in a foster home or in the home of
3 a relative other than a parent, the foster parent or relative may present relevant
4 evidence at the hearing.

5 5. The petitioner has the burden of proving by clear and convincing evidence
6 that the decision or order issued by the agency is not in the best interests of the child.

7 **SECTION 19.** 48.64 (4) (c) 3. and 4. of the statutes are created to read:

8 48.64 (4) (c) 3. If the head of a foster home or the head of the home of a relative
9 other than a parent who receives notice of intent to remove the child under sub. (1m)
10 petitions for a hearing under this paragraph, the circuit court shall call a hearing,
11 at which the head of the foster home or the head of the home of the relative other than
12 a parent and the supervising agency under sub. (2) shall be present, for the purpose
13 of reviewing the decision to remove the child from the home. The head of the foster
14 home or the head of the home of the relative other than a parent is a party to the
15 proceeding under this paragraph and, as a party, may be represented by counsel and
16 has the right to be heard, to request an examination or assessment of the child as
17 provided in s. 48.295 by an expert of his or her own choosing, to present evidence
18 relative to the issue of placement, including expert testimony, to confront and
19 cross-examine witnesses, and to make alternative placement recommendations. If
20 the child is an Indian child, any alternative placement recommendations shall
21 comply with s. 48.028 (7) (b) or (c), whichever is applicable. The amount of time that
22 a child has spent in a foster home or home of a relative other than a parent is not,
23 on its own, good cause for departing from the order of placement preference under
24 s. 48.028 (7) (b) or (c).

1 4. Counsel for the head of the foster home or for the head of the home of the
2 relative other than a parent may inspect and obtain copies of all records relating to
3 the child as provided under s. 48.293. If counsel for the head of the foster home or
4 for the head of the home of the relative other than a parent discloses a record to the
5 head of the foster home or to the head of the home of the relative other than a parent,
6 counsel shall advise him or her that the information contained in the record is
7 confidential and may be disclosed only for the purpose of participating in the
8 proceeding under this paragraph.

9 **SECTION 20.** 48.78 (2) (a) of the statutes is amended to read:

10 48.78 (2) (a) No agency may make available for inspection or disclose the
11 contents of any record kept or information received about an individual who is or was
12 in its care or legal custody, except as provided under sub. (2m) or s. 48.293 (2), 48.371,
13 48.38 (5) (b) or (d) or (5m) (d), 48.396 (3) (bm) or (c) 1r., 48.432, 48.433, 48.48 (17) (bm),
14 48.57 (2m), 48.66 (6), 48.93, 48.981 (7), 938.293 (2), 938.396 (2m) (c) 1r., 938.51, or
15 938.78 or by order of the court.

16 **SECTION 21.** 938.293 (2) of the statutes is amended to read:

17 938.293 (2) RECORDS RELATING TO JUVENILE. All records relating to a juvenile
18 ~~which are relevant to the subject matter of a proceeding under this chapter shall be~~
19 open to inspection by a guardian ad litem or counsel for any party or by counsel for
20 any foster parent or other physical custodian described in s. 938.357 (2r) (b), upon
21 demand and upon presentation of releases ~~where~~ when necessary, at least 48 hours
22 before the proceeding. Persons entitled to inspect the records may obtain copies of
23 the records with the permission of the custodian of the records or with the permission
24 of the court. The court may instruct counsel not to disclose specified items in the
25 ~~materials~~ records to the juvenile ~~or, the parent, or the juvenile's foster parent or other~~

1 physical custodian described in s. 938.357 (2r) (b) if the court reasonably believes
2 that the disclosure would be harmful to the interests of the juvenile. Section 971.23
3 shall be applicable in all delinquency proceedings under this chapter, except that the
4 court shall establish the timetable for the disclosures required under s. 971.23 (1),
5 (2m), (8), and (9).

6 **SECTION 22.** 938.295 (1) (b) of the statutes is amended to read:

7 938.295 (1) (b) The court shall hear any objections by the juvenile and the
8 juvenile's parents, guardian, or legal custodian or the juvenile's foster parent or other
9 physical custodian described in s. 938.357 (2r) (b) to the request under par. (a) for an
10 examination or assessment before ordering the examination or assessment.

11 **SECTION 23.** 938.295 (3) of the statutes is amended to read:

12 938.295 (3) OBJECTION TO A PARTICULAR PROFESSIONAL. If the juvenile or, a
13 parent, or the juvenile's foster parent or other physical custodian described in s.
14 938.357 (2r) (b) objects to a particular physician, psychiatrist, licensed psychologist,
15 or other expert, the court shall appoint a different physician, psychiatrist,
16 psychologist, or other expert.

17 **SECTION 24.** 938.357 (2r) of the statutes is renumbered 938.357 (2r) (a) and
18 amended to read:

19 938.357 (2r) (a) If a hearing is held under sub. (1) (am) 2. or (2m) (b) 1. and the
20 change in placement would remove a juvenile from a foster home or other placement
21 with a physical custodian described in s. 48.62 (2) in which the juvenile has been
22 placed for less than 6 months, the court shall give the foster parent or other physical
23 custodian a right to be heard at the hearing by permitting the foster parent or other
24 physical custodian to make a written or oral statement during the hearing or to
25 submit a written statement prior to the hearing relating to the juvenile and the

1 requested change in placement. A foster parent or other physical custodian who
2 receives notice of a hearing under sub. (1) (am) 1. or (2m) (b) 2. and a right to be heard
3 under this ~~subsection~~ paragraph does not become a party to the proceeding on which
4 the hearing is held solely on the basis of receiving that notice and right to be heard.

5 **SECTION 25.** 938.357 (2r) (b) of the statutes is created to read:

6 938.357 (2r) (b) If a hearing is held under sub. (1) (am) 2. or (2m) (b) 1. and the
7 change in placement would remove a juvenile from a foster home or other placement
8 with a physical custodian described in s. 48.62 (2) in which the juvenile has been
9 placed for 6 months or more, the foster parent or other physical custodian is a party
10 to the proceeding and, as a party, may be represented by counsel and has the right
11 to be heard as described in par. (a), to request an examination or assessment of the
12 juvenile under s. 938.295 by an expert of the foster parent's or other physical
13 custodian's own choosing, to present evidence relative to the issue of placement,
14 including expert testimony, to confront and cross-examine witnesses, and to make
15 alternative placement recommendations. In addition, counsel for the foster parent
16 or other physical custodian may inspect and obtain copies of all records relating to
17 the juvenile as provided under s. 938.293. If counsel for the foster parent or other
18 physical custodian discloses a record to the foster parent or other physical custodian,
19 counsel shall advise that person that the information contained in the record is
20 confidential and may be disclosed only for the purpose of participating in the
21 change-in-placement proceeding.

22 **SECTION 26.** 938.396 (2m) (b) 1. of the statutes is amended to read:

23 938.396 (2m) (b) 1. The court shall make information relating to a proceeding
24 under this chapter that is contained in the electronic records of the court available
25 to any other court assigned to exercise jurisdiction under this chapter and ch. 48, a

1 municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal
2 jurisdiction, a person representing the interests of the public under s. 48.09 or
3 938.09, an attorney or guardian ad litem for a parent or child who is a party to a
4 proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48,
5 or an attorney for a foster parent or other physical custodian described in s. 938.357
6 (2r) (b) or a municipal court, a district attorney prosecuting a criminal case, a law
7 enforcement agency, the department of children and families, the department of
8 corrections, or a county department, regardless of whether the person to whom the
9 information is disclosed is a party to or is otherwise involved in the proceedings in
10 which the electronic records containing that information were created. The director
11 of state courts may use the circuit court automated information systems established
12 under s. 758.19 (4) to make information contained in the electronic records of the
13 court available as provided in this subdivision.

14 **SECTION 27.** 938.396 (2m) (c) 1m. of the statutes is amended to read:

15 938.396 **(2m)** (c) 1m. A person representing the interests of the public under
16 s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party
17 to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch.
18 48, or an attorney for a foster parent or other physical custodian described in s.
19 938.357 (2r) (b) or a municipal court, or a district attorney prosecuting a criminal
20 case shall keep any information made available to that person under par. (b) 1.
21 confidential and may use or allow access to that information only for the purpose of
22 performing his or her official duties relating to a proceeding in a court assigned to
23 exercise jurisdiction under this chapter and ch. 48, a municipal court, or a court of
24 criminal jurisdiction. That person may allow that access regardless of whether the
25 person who is allowed that access is a party to or is otherwise involved in the

1 proceedings in which the electronic records containing that information were
2 created.

3 **SECTION 28.** 938.78 (2) (a) of the statutes is amended to read:

4 938.78 (2) (a) No agency may make available for inspection or disclose the
5 contents of any record kept or information received about an individual who is or was
6 in its care or legal custody, except as provided under sub. (2m) or (3) or s. 48.396 (3)
7 (bm) or (c) 1r., 938.293 (2), 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c)
8 1r., 938.51, or 938.57 (2m) or by order of the court.

9 **SECTION 29. Initial applicability.**

10 (1) CHANGES IN PLACEMENT. The treatment of ss. 48.293 (2), 48.295 (1) and (3),
11 48.357 (1) (am) 2. a. and 3. and (2m) (am) 2. and (c) 2., 48.396 (3) (b) 1. and (c) 1m.,
12 48.437 (1) (c), 48.78 (2) (a), 938.293 (2), 938.295 (1) (b) and (3), 938.396 (2m) (b) 1. and
13 (c) 1m., and 938.78 (2) (a), the renumbering and amendment of ss. 48.357 (2r), 48.437
14 (2r), and 938.357 (2r), and the creation of ss. 48.357 (2r) (b), 48.437 (2r) (b), and
15 938.357 (2r) (b) first apply to a change of placement requested on the effective date
16 of this subsection.

17 (2) DECISIONS AFFECTING OUT-OF-HOME PLACEMENTS. The renumbering and
18 amendment of s. 48.64 (4) (a) and (c) and the creation of s. 48.64 (4) (a) 2. and 3. and
19 (c) 3. and 4. first apply to a decision or order of an agency involving the placement
20 and care of a child issued on the effective date of this subsection.

21 (END)