



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1261/1
EAW:kjf

2021 ASSEMBLY BILL 628

October 21, 2021 - Introduced by Representatives DITTRICH, GUNDRUM, PENTERMAN, MURSAU, WICHGERS, TUSLER, SNYDER and DOYLE, cosponsored by Senator JACQUE. Referred to Committee on Family Law.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 48.422 (4); and *to amend* 48.31 (2), 48.31 (4), 48.415 (intro.),
2 48.422 (1), 48.422 (5), 48.424 (3) and 48.424 (4) (intro.) of the statutes; **relating**
3 **to:** elimination of a jury trial in a proceeding under the Children's Code.

Analysis by the Legislative Reference Bureau

Under current law, in a termination of parental rights proceeding, a child or the child's parent, guardian, or legal custodian; an unborn child's guardian ad litem; or an expectant mother of an unborn child has a statutory right to a jury trial in the fact-finding portion of the proceeding. This bill eliminates that statutory right.

For further information see the 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:

4 **SECTION 1.** 48.31 (2) of the statutes is amended to read:
5 48.31 (2) The A hearing on a termination of parental rights petition shall be
6 to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court
7 unless the child, the child's parent, guardian, or legal custodian, the unborn child's

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1 guardian ad litem, or the expectant mother of the unborn child exercises the right
2 to a jury trial by demanding a jury trial at any time before or during the plea hearing.
3 If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall
4 consist of 6 persons. ~~If a jury trial is demanded in a proceeding under s. 48.42, the~~
5 ~~jury shall consist of 12 persons unless the parties agree to a lesser number.~~ Chapters
6 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim
7 or witness, as defined in s. 950.02, the court may order that a deposition be taken by
8 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to
9 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
10 of ~~the a hearing on a termination of parental rights petition~~, the court shall make a
11 determination of the facts. ~~At the conclusion of a hearing on a petition under s. 48.13~~
12 ~~or 48.133, the court or jury shall make a determination of the facts, except that in a~~
13 case alleging a child or an unborn child to be in need of protection or services under
14 s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or
15 48.133 relating to whether the child or unborn child is in need of protection or
16 services that can be ordered by the court. If the court finds that the child or unborn
17 child is not within the jurisdiction of the court or, in a case alleging a child or an
18 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the
19 child or unborn child is not in need of protection or services that can be ordered by
20 the court, or if the court or jury finds that the facts alleged in the petition have not
21 been proved, the court shall dismiss the petition with prejudice.

22 **SECTION 2.** 48.31 (4) of the statutes is amended to read:

23 48.31 (4) The court shall make findings of fact and conclusions of law relating
24 to the allegations of a petition filed under s. 48.42. The court or jury shall make
25 findings of fact and the court shall make conclusions of law relating to the allegations

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1 of a petition filed under s. 48.13, ~~or 48.133 or 48.42~~, except that the court shall make
2 findings of fact relating to whether the child or unborn child is in need of protection
3 or services ~~which~~ that can be ordered by the court. In cases alleging a child to be in
4 need of protection or services under s. 48.13 (11), the court may not find that the child
5 is suffering emotional damage unless a licensed physician specializing in psychiatry
6 or a licensed psychologist appointed by the court to examine the child has testified
7 at the hearing that in his or her opinion the condition exists, and adequate
8 opportunity for the cross-examination of the physician or psychologist has been
9 afforded. The judge may use the written reports if the right to have testimony
10 presented is voluntarily, knowingly, and intelligently waived by the guardian ad
11 litem or legal counsel for the child and the parent or guardian. In cases alleging a
12 child to be in need of protection or services under s. 48.13 (11m) or an unborn child
13 to be in need of protection or services under s. 48.133, the court may not find that the
14 child or the expectant mother of the unborn child is in need of treatment and
15 education for needs and problems related to the use or abuse of alcohol beverages,
16 controlled substances, or controlled substance analogs and its medical, personal,
17 family, or social effects unless an assessment for alcohol and other drug abuse that
18 conforms to the criteria specified under s. 48.547 (4) has been conducted by an
19 approved treatment facility.

20 **SECTION 3.** 48.415 (intro.) of the statutes is amended to read:

21 **48.415 Grounds for involuntary termination of parental rights.** (intro.)

22 At the fact-finding hearing the court ~~or jury~~ shall determine whether grounds exist
23 for the termination of parental rights. If the child is an Indian child, the court ~~or jury~~
24 shall also determine at the fact-finding hearing whether continued custody of the
25 Indian child by the Indian child's parent or Indian custodian is likely to result in

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1 serious emotional or physical damage to the Indian child under s. 48.028 (4) (e) 1. and
2 whether active efforts under s. 48.028 (4) (e) 2. have been made to prevent the
3 breakup of the Indian child's family and whether those efforts have proved
4 unsuccessful, unless partial summary judgment on the grounds for termination of
5 parental rights is granted, in which case the court shall make those determinations
6 at the dispositional hearing. Grounds for termination of parental rights shall be one
7 of the following:

8 **SECTION 4.** 48.422 (1) of the statutes is amended to read:

9 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
10 to terminate parental rights shall be held within 30 days after the petition is filed.
11 At the hearing on the petition to terminate parental rights the court shall determine
12 whether any party wishes to contest the petition and inform the parties of their
13 rights under ~~sub. (4) and~~ s. 48.423.

14 **SECTION 5.** 48.422 (4) of the statutes is repealed.

15 **SECTION 6.** 48.422 (5) of the statutes is amended to read:

16 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
17 continuance of the hearing for the purpose of consulting with an attorney ~~on the~~
18 ~~request for a jury trial or~~ concerning a request for the substitution of a judge.

19 **SECTION 7.** 48.424 (3) of the statutes is amended to read:

20 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
21 shall decide whether any grounds for the termination of parental rights have been
22 proved ~~and,~~ whether the allegations specified in s. 48.42 (1) (e) have been proved in
23 cases involving the involuntary termination of parental rights to an Indian child.
24 ~~The court shall decide,~~ and what disposition is in the best interest of the child.

25 **SECTION 8.** 48.424 (4) (intro.) of the statutes is amended to read:

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1 48.424 (4) (intro.) If the court finds grounds for the termination of parental
2 rights ~~are found by the court or jury~~, the court shall find the parent unfit. A finding
3 of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). Except
4 as provided in s. 48.23 (2) (b) 3., the court shall then proceed immediately to hear
5 evidence and motions related to the dispositions enumerated in s. 48.427. Except as
6 provided in s. 48.42 (2g) (ag), the court may delay making the disposition and set a
7 date for a dispositional hearing no later than 45 days after the fact-finding hearing
8 if any of the following apply:

9 **SECTION 9. Initial applicability.**

10 (1) RIGHT TO A JURY TRIAL. This act first applies to a termination of parental
11 rights proceeding in which the petition is filed under s. 48.42 (1) on the effective date
12 of this subsection.

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(END)