



1995 SENATE BILL 229

June 1, 1995 - Introduced by Senators LEEAN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on Judiciary.

1 **AN ACT to repeal** 48.415 (6) (a) 2.; **to renumber and amend** 48.415 (6) (b); **to**
2 **consolidate, renumber and amend** 48.415 (6) (a) (intro.) and 1.; **to amend**
3 48.235 (4) (a) 3., 48.255 (2), 48.415 (1) (a) 2., 48.415 (1) (a) 3., 48.415 (1) (b),
4 48.415 (1) (c), 48.415 (5) (intro.), 48.415 (8) and 48.42 (1) (intro.); and **to create**
5 48.235 (4) (c), 48.255 (1) (cm), 48.415 (2m), 48.42 (1) (d), 48.43 (1) (d) and 48.43
6 (1) (e) of the statutes; **relating to:** involuntary termination of parental rights
7 on the grounds of abandonment, continuing alcohol or other drug abuse; child
8 abuse, failure to assume parental responsibility and conviction for homicide of
9 a child's sibling; required findings in a termination of parental rights order; and
10 various termination of parental rights procedural changes.

Analysis by the Legislative Reference Bureau

Current law provides various grounds for involuntary termination of parental rights (TPR). Those grounds include continuing need of protection or services, child abuse, failure to assume parental responsibility, abandonment, continuing parental disability, continuing denial of periods of physical placement, incestuous parenthood and intentional homicide of a parent.

Currently, continuing need of protection or services may be established by a showing that: 1) the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home by the court assigned to exercise jurisdiction under the children's code (juvenile court); 2) the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the juvenile court; and 3) the child has been outside

the home for a cumulative total period of one year or longer or, if the child has not attained the age of 3 years, for a cumulative total period of 6 months or longer, the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet those conditions within the next 12 months.

This bill creates continuing alcohol or other drug abuse as a new grounds for involuntary TPR. Continuing alcohol or other drug abuse may be established by a showing that: 1) the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home by a juvenile court and the parent's abuse of alcohol or other drugs contributed to the juvenile court's decision to place the child or continue the child's placement outside the child's home; 2) a condition for the return of the child to the home is the parent's participation in alcohol or other drug abuse treatment and the agency responsible for the care of the child and the family has made a diligent effort to provide that treatment; and 3) the child has been outside the home for a cumulative total period of 6 months or longer and the parent has failed to participate actively and voluntarily in that treatment and has continued to abuse alcohol or other drugs.

Currently, child abuse may be established by a showing that the parent has exhibited a pattern of abusive behavior which poses a substantial threat to the health of the child and that the parent has been convicted of a felony for causing death or injury to a child or that, on more than one occasion, a child has been removed from the home after being adjudicated to be in need of protection or services after a finding that sexual or physical abuse has been inflicted by the parent. This bill eliminates the pattern of abuse and substantial threat requirements so that either the felony conviction or the removal from the home because of sexual or physical abuse are sufficient to establish child abuse as grounds for TPR.

Currently, the parental rights of the father of a nonmarital child, that is, a child who is neither conceived nor born while his or her parents are intermarried, who has not been adopted or whose parents have not intermarried and for whom paternity has not been adjudicated may be terminated on the grounds of failure to assume parental responsibility. Failure to assume parental responsibility may be established by a showing that the father has never established a "substantial parental relationship" with the child; that is, he has never accepted and exercised significant responsibility for the daily supervision, education, protection and care of the child. This bill expands this ground for involuntary TPR to include mothers as well as fathers and marital, as well as nonmarital, children.

Currently, abandonment may be established by a showing that a child has been placed, or continued in a placement, outside of the parent's home by an order of the juvenile court and that the parent has failed to visit or communicate with the child for 6 months or longer. This bill shortens that period to 3 months or longer. Currently, abandonment may also be established by a showing that the parent has left the child with a relative or other person, that the parent knows or could discover the whereabouts of the child and that the parent has failed to visit or communicate with the child for one year or longer. This bill shortens that period to 6 months or longer. Currently, a parent may rebut a showing of abandonment by producing

evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being. This bill changes that standard to evidence that the parent has made a voluntary effort to fulfill his or her parental responsibility for the child's care and well-being. Currently, incidental contact between a parent and child does not preclude the juvenile court from finding that the parent has abandoned the child. This bill changes that standard to incidental or occasional contact.

The bill also adds as a ground for involuntary TPR intentional homicide of a sibling, which may be established by a showing that a sibling has been the victim of first-degree intentional homicide or of 2nd-degree intentional homicide and that the person whose parental rights are sought to be terminated has been convicted of that intentional homicide.

Under current law, the juvenile court may appoint a guardian ad litem for a child in any appropriate matter under the children's code. A guardian ad litem for a child is an attorney who must advocate for the best interests of the child and may take certain actions relating to the child, including petitioning for TPR over the child. This bill requires a guardian ad litem for a child who has been adjudged to be in need of protection or services (CHIPS) to file a TPR petition for the child if it appears to the guardian ad litem that grounds exist for a TPR and that a TPR would be in the best interests of the child and if no other person who is authorized to file a TPR petition, such as the district attorney or corporation counsel, does so.

Under current law, a petition initiating proceedings under the children's code, such as a delinquency petition, a CHIPS petition or a TPR petition, must contain certain information such as the name, age and address of the child, the names and addresses of the child's parents, guardian and legal custodian and the grounds for the petition. This bill requires a petition initiating proceedings under the children's code to state whether the child may be subject to the federal Indian child welfare act, which supersedes the children's code when an Indian child is involved.

Under current law, for the state to receive federal foster care and adoption assistance funding under Title IV-E of the federal social security act for the care of a child who is placed out of his or her home by an order of the juvenile court, the juvenile court order must contain the following findings:

1. That reasonable efforts have been made to prevent the removal of the child from his or her home or, if applicable, to make it possible for the child to return to his or her home.
2. That the continuation of the child in the home of the parent is contrary to the welfare of the child.

This bill requires TPR orders, whether voluntary or involuntary, to contain those findings.

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.** 48.235 (4) (a) 3. of the statutes is amended to read:

2 48.235 (4) (a) 3. ~~Petition~~ Subject to par. (c), petition for termination of parental
3 rights or any other matter specified under s. 48.14.

4 **SECTION 2.** 48.235 (4) (c) of the statutes is created to read:

5 48.235 (4) (c) The guardian ad litem for a child who has been found to be in need
6 of protection or services shall petition for termination of parental rights over the
7 child if it appears to the guardian ad litem that grounds exist for the termination of
8 parental rights and that termination of parental rights would be in the best interests
9 of the child and if no other person who is authorized to petition for termination of
10 parental rights over the child does so.

11 **SECTION 3.** 48.255 (1) (cm) of the statutes is created to read:

12 48.255 (1) (cm) Whether the child may be subject to the federal Indian child
13 welfare act, 25 USC 1911 to 1963.

14 **SECTION 4.** 48.255 (2) of the statutes is amended to read:

15 48.255 (2) If any of the facts in sub. (1) (a), ~~(b) or (e)~~ to (cm) are not known or
16 cannot be ascertained by the petitioner, the petition shall so state.

17 **SECTION 5.** 48.415 (1) (a) 2. of the statutes is amended to read:

18 48.415 (1) (a) 2. The child has been placed, or continued in a placement, outside
19 the parent's home by a court order containing the notice required by s. 48.356 (2) and
20 the parent has failed to visit or communicate with the child for a period of ~~6~~ 3 months
21 or longer; or

22 **SECTION 6.** 48.415 (1) (a) 3. of the statutes is amended to read:

23 48.415 (1) (a) 3. The child has been left by the parent with a relative or other
24 person, the parent knows or could discover the whereabouts of the child and the

1 parent has failed to visit or communicate with the child for a period of ~~one year~~ 6
2 months or longer.

3 **SECTION 7.** 48.415 (1) (b) of the statutes is amended to read:

4 48.415 (1) (b) Incidental or occasional contact between parent and child shall
5 not preclude the court from finding that the parent has failed to visit or communicate
6 with the child under par. (a) 2. or 3. The time periods under par. (a) 2. or 3. shall not
7 include any periods during which the parent has been prohibited by judicial order
8 from visiting or communicating with the child.

9 **SECTION 8.** 48.415 (1) (c) of the statutes is amended to read:

10 48.415 (1) (c) A showing under par. (a) that abandonment has occurred may be
11 rebutted by other evidence that the parent has ~~not disassociated himself or herself~~
12 ~~from the child or relinquished~~ made a voluntary effort to fulfill his or her
13 responsibility for the child's care and well-being.

14 **SECTION 9.** 48.415 (2m) of the statutes is created to read:

15 48.415 (2m) CONTINUING ALCOHOL OR OTHER DRUG ABUSE. Continuing alcohol or
16 other drug abuse may be established by a showing of all of the following:

17 (a) That the child has been adjudged to be in need of protection or services and
18 placed, or continued in a placement, outside his or her home pursuant to one or more
19 court orders under s. 48.345, 48.357, 48.363 or 48.365 containing the notice required
20 by s. 48.356 (2) and the parent's abuse of alcohol or other drugs contributed to the
21 court's decision to place the child, or continue the child's placement, outside his or her
22 home.

23 (b) That a condition for the return of the child to the home is the parent's
24 participation in alcohol or other drug abuse treatment and the agency responsible

1 for the care of the child and the family has made a diligent effort to provide that
2 treatment.

3 (c) That the child has been outside the home for a cumulative total period of 6
4 months or longer under those orders and the parent has failed to participate actively
5 and voluntarily in that treatment and continues to abuse alcohol or other drugs.

6 **SECTION 10.** 48.415 (5) (intro.) of the statutes is amended to read:

7 48.415 (5) CHILD ABUSE. (intro.) Child abuse may be established by a showing
8 that the parent has exhibited a pattern of abusive behavior which is a substantial
9 threat to the health of the child who is the subject of the petition and a showing of
10 either of any of the following:

11 **SECTION 11.** 48.415 (6) (a) (intro.) and 1. of the statutes are consolidated,
12 renumbered 48.415 (6) (b) and amended to read:

13 48.415 (6) (b) Failure to assume parental responsibility may be established by
14 a showing that ~~a child is a nonmarital child who has not been adopted or whose~~
15 ~~parents have not subsequently intermarried under s. 767.60, that paternity was not~~
16 ~~adjudicated before the filing of the petition for termination of parental rights and:~~
17 ~~1. The person or persons who may be the father of the child have been given notice~~
18 ~~under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the~~
19 ~~court and that such person or persons have~~ the parent or a person who may be the
20 parent has never had a substantial parental relationship with the child; ~~or.~~

21 **SECTION 12.** 48.415 (6) (a) 2. of the statutes is repealed.

22 **SECTION 13.** 48.415 (6) (b) of the statutes is renumbered 48.615 (6) (a) and
23 amended to read:

1 48.615 (6) (a) In this subsection, “substantial parental relationship” means the
2 acceptance and exercise of significant responsibility for the daily supervision,
3 education, protection and care of the child.

4 (c) In evaluating whether the person has had a substantial parental
5 relationship with the child, the court may consider such factors, including, but not
6 limited to, whether the person has ever expressed concern for or interest in the
7 support, care or well-being of the child ~~or the mother during her pregnancy~~ and
8 whether the person has neglected or refused to provide care or support. If the person
9 is or may be the father of the child, the court may also consider, in evaluating whether
10 the person has had a substantial parental relationship with the child, whether the
11 person has ever expressed concern for or interest in the support, care or well-being
12 of the mother during her pregnancy.

13 **SECTION 14.** 48.415 (8) of the statutes is amended to read:

14 48.415 (8) (title) INTENTIONAL HOMICIDE OF PARENT OR SIBLING. Intentional
15 homicide of a parent or sibling may be established by a showing that a parent or
16 sibling of the child has been a victim of first-degree intentional homicide in violation
17 of s. 940.01 or of 2nd-degree intentional homicide in violation of s. 940.05 and that
18 the person whose parental rights are sought to be terminated has been convicted of
19 that intentional homicide.

20 **SECTION 15.** 48.42 (1) (intro.) of the statutes is amended to read:

21 48.42 (1) PETITION. (intro.) A proceeding for the termination of parental rights
22 shall be initiated by petition which may be filed by the child’s parent, an agency or
23 a person authorized to file a petition under s. 48.235 (4) (a) 3., 48.25 or 48.835. The
24 petition shall be entitled “In the interest of (child’s name), a person under the
25 age of 18” and shall set forth with specificity:

1 **SECTION 16.** 48.42 (1) (d) of the statutes is created to read:

2 48.42 (1) (d) A statement of whether the child may be subject to the federal
3 Indian child welfare act, 25 USC 1911 to 1963.

4 **SECTION 17.** 48.43 (1) (d) of the statutes is created to read:

5 48.43 (1) (d) The court’s finding as to whether a county department which
6 provides social services or the agency primarily responsible for the provision of
7 services has made reasonable efforts to prevent the removal of the child from the
8 home or, if applicable, that the agency primarily responsible for the provision of
9 services has made reasonable efforts to make it possible for the child to return to his
10 or her home.

11 **SECTION 18.** 48.43 (1) (e) of the statutes is created to read:

12 48.43 (1) (e) The court’s finding that the continuation of the child in the home
13 of the parent is contrary to the welfare of the child.

14 **SECTION 19. Initial applicability; circuit courts.**

15 (1) TERMINATION OF PARENTAL RIGHTS.

16 (a) *Abandonment.* The treatment of section 48.415 (1) (a) 2. and 3., (b) and (c)
17 of the statutes first applies to a child who is placed, or continued in a placement,
18 outside of his or her parent’s home, or who is left by the parent with a relative or other
19 person, on the effective date of this paragraph.

20 (b) *Termination of parental rights on grounds of continuing alcohol or other*
21 *drug abuse.* The treatment of section 48.415 (2m) of the statutes first applies to court
22 orders under sections 48.345, 48.357, 48.363 and 48.365 of the statutes entered on
23 the effective date of this paragraph.

24 (c) *Termination of parental rights on grounds of child abuse and failure to*
25 *assume parental responsibility.* The treatment of section 48.415 (5) (intro.) and (6)

1 (a) (intro.), 1. and 2., and (b) of the statutes first applies to termination of parental
2 rights petitions filed on the effective date of this paragraph.

3 (d) *Intentional homicide of sibling.* The treatment of section 48.415 (8) of the
4 statutes first applies to petitions for termination of parental rights under section
5 48.42 (1) of the statutes filed on the effective date of this paragraph, but does not
6 preclude consideration of a conviction under section 940.01 or 940.05 of the statutes
7 obtained before the effective date of this paragraph in determining whether to
8 terminate, or to find grounds to terminate, the parental rights of a person under
9 section 48.415 (8) of the statutes, as affected by this act.

10 (e) *Dispositional orders.* The treatment of section 48.43 (1) (d) and (e) of the
11 statutes first applies to termination of parental rights petitions filed on the effective
12 date of this paragraph.

13 (END)