2005 DRAFTING REQUEST

Bill

Received: **02/25/2005**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Connie Schulze**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Elimination of jury trials in termination of parental rights proceedings

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Instructions:

Redraft 2003 SB 400

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 02/25/2005	jdyer 02/28/2005		_____ _____			S&L
/1			rschluet 02/28/2005	_____ _____	sbasford 02/28/2005	mbarman 02/28/2005	

FE Sent For:

<END>

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise	1/2/08 jkd	2/8/5				

FE Sent For:

<END>

2003 – 2004 LEGISLATURE

-2283/1
LRB–~~3604/1~~
GMM:~~kmg~~:rs

~~2003 SENATE BILL 400~~

LPS-
PWF
please

~~January 21, 2004 – Introduced by Senators HANSEN, RISSER and SCHULTZ, cosponsored by Representatives GARD, RHOADES, PETROWSKI, JESKEWITZ, F. LASEE and OTT, by request of Kevin Brennan. Referred to Committee on Judiciary, Corrections and Privacy.~~

Regen

AN ACT ***to repeal*** 48.422 (4); ***to amend*** 48.31 (2), 48.31 (4), 48.415 (intro.), 48.422 (1), 48.422 (5), 48.424 (2) (a), 48.424 (3) and 48.424 (4) (intro.); and ***to create*** 48.424 (2) (c) of the statutes; **relating to:** the elimination of jury trials in termination of parental rights proceedings.

Analysis by the Legislative Reference Bureau

Under current law, any party to a termination of parental rights (TPR) proceeding whose rights may be affected by the TPR order may demand a jury trial to determine if there are any grounds for the TPR. This bill eliminates the right to a jury trial in a TPR proceeding.

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:

SECTION 1. 48.31 (2) of the statutes is amended to read:

48.31 **(2)** ~~The~~ A hearing on a termination of parental rights petition shall be to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court

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

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

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

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

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

48.415 Grounds for involuntary termination of parental rights. (intro.) At the fact–finding hearing the court ~~or jury~~ may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

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

48.422 **(1)** The hearing on the petition to terminate parental rights shall be held within 30 days after the petition is filed. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under ~~sub. (4) and~~ s. 48.423.

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

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

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

SECTION 7. 48.424 (2) (a) of the statutes is amended to read:

48.424 **(2)** (a) The court may exclude the child from the hearing~~; and~~.

SECTION 8. 48.424 (2) (c) of the statutes is created to read:

48.424 **(2)** (c) There is no right to a jury trial.

SECTION 9. 48.424 (3) of the statutes is amended to read:

48.424 **(3)** ~~If the facts are determined by a jury, the jury may only~~ The court shall decide whether any grounds for the termination of parental rights have been proven~~. The court shall decide~~ and what disposition is in the best interest of the child.

SECTION 10. 48.424 (4) (intro.) of the statutes is amended to read:

48.424 **(4)** (intro.) If grounds for the termination of parental rights are found by the court ~~or jury~~, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact–finding hearing if:

1 **SECTION 11. Initial applicability.**

2 (1) ELIMINATION OF JURY TRIALS IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS.

3 This act first applies to a termination of parental rights proceeding in which the

4 initial hearing under section 48.422 (1) of the statutes, as affected by this act, is held

5 on the effective date of this subsection.

6 **(END)**

Northrop, Lori

From: Petri, Tom
Sent: Monday, February 28, 2005 1:21 PM
To: LRB.Legal
Subject: Draft review: LRB 05-2283/1 Topic: Elimination of jury trials in termination of parental rights proceedings

It has been requested by <Petri, Tom> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-2283/1 Topic: Elimination of jury trials in termination of parental rights proceedings