2013 DRAFTING REQUEST

Bill

Received:	**2/13/2013**	Received By:	**gmalaise**
Wanted:	**As time permits**	Same as LRB:	
For:	**Legislative Council - JLC 6-2298**	By/Representing:	**Melissa Schmidt**
May Contact:		Drafter:	**gmalaise**
Subject:	**Children - miscellaneous**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **melissa.schmidt@legis.wisconsin.gov**
Carbon copy (CC) to: **margit.kelley@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Right to counsel and elimination of jury trials in proceedings under the Children's Code

Instructions:

See attached--draft up WLC: 0068/1

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 2/19/2013			_____ _____			
/P1		scalvin 3/4/2013	rschluet 3/5/2013	_____ _____			
/P2	gmalaise 3/8/2013			_____ _____	mbarman 3/5/2013		State S&L
/1		scalvin	jfrantze	_____	srose	lparisi	State

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
		3/8/2013	3/8/2013		3/8/2013	3/20/2013	S&L

FE Sent For:

<END>

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/P2		/1 sac 03/08/2013	3/8		mbarman 3/5/2013		State S&L

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Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise	/p2 sac 03/04/2013	LC Conversion 2/13 ph				

FE Sent For:

<END>

AN ACT ***to repeal*** 48.235 (6), 48.243 (1) (g), 48.317 (2) and 48.422 (4); ***to renumber*** 48.23 (2); ***to renumber and amend*** 48.23 (4); ***to consolidate, renumber and amend*** 48.317 (intro.) and (1); ***to amend*** 48.028 (4) (d) 1. and 2., (e) 1. and 2. and (g) 1., 48.20 (8) (a), 48.21 (3) (d), 48.213 (2) (d), 48.23 (3), 48.30 (2), 48.31 (2), 48.31 (4), 48.31 (5), 48.415 (intro.), 48.422 (1), 48.422 (5), 48.424 (3) and 48.424 (4) (intro.); and ***to create*** 48.23 (2) (bm), 48.23 (2) (br), 48.23 (4) (c) and (d) 1. to 3. and 48.23 (6) of the statutes; **relating to:** the right of a parent to have counsel in a proceeding for a child alleged to be in need of protection or services, and making an appropriation; the ability of the court to appoint counsel; and elimination of the right to a jury trial in a proceeding under the children's code for a child in need of protection or services or for termination of parental rights.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Permanency for Young Children in the Child Welfare System.

Power of the Court to Appoint Counsel

Under current statutes, in a proceeding under the Children's Code, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) may appoint counsel for the child and any other party, with one exception. The juvenile court may not appoint counsel for any party other than the child, an Indian parent, or an Indian custodian in a proceeding in which it is alleged that a child is in need of protection or services (CHIPS). This statutory prohibition, however, was ruled unconstitutional by the Wisconsin supreme court in *Joni B. v. State*, 202 Wis. 2d 1 (1996), on the grounds that the prohibition constitutes a violation of the separation of powers doctrine of the Wisconsin Constitution.

This draft eliminates the statutory prohibition placed on a juvenile court regarding appointment of counsel for parents, clarifying in the statutes that a court has the power to appoint counsel for any party, including a parent 18 years of age or over, during a CHIPS proceeding, consistent with constitutional law.

Right to Counsel and Referral to the State Public Defender

Under current law, a parent over the age of 18 does not have a statutory right to be represented by counsel during a CHIPS proceeding. Therefore, the court may not refer such a parent to the state public defender (SPD) for possible representation. The juvenile court may, however, appoint counsel at its discretion, in which case the parent's legal representation is provided at the county's expense.

The draft allows a parent of any age the right to counsel during a CHIPS proceeding, giving the parent the ability to be represented by an SPD, if the child has been taken into custody. In order for an SPD to be appointed immediately for a temporary physical custody hearing, a court may order an indigency determination at the conclusion of a CHIPS proceeding, rather than upon the initial referral to SPD.

Under the draft, the right to counsel for a parent in a CHIPS proceeding sunsets on June 30, 2017. Also, the department of children and families (DCF) must submit a report by January 1, 2017 to the joint committee on finance and each house of the legislature regarding the costs and data from implementing a parent's right to counsel in a CHIPS proceeding.

Elimination of Jury Trial in a CHIPS or Termination of Parental Rights Proceeding

Under current law, a party to a CHIPS or termination of parental rights (TPR) proceeding may request a trial by a jury to determine if there are grounds to grant a CHIPS adjudication or TPR order.

The draft eliminates the right to request a jury trial in both CHIPS and TPR proceedings.

SECTION 1. 48.028 (4) (d) 1. and 2., (e) 1. and 2. and (g) 1. of the statutes are amended to read:

48.028 **(4)** (d) 1. The court ~~or jury~~ finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed

in par. (f), that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2. The court ~~or jury~~ finds by clear and convincing evidence that active efforts, as described in par. (g) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. The court ~~or jury~~ shall make that finding notwithstanding that a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies.

(e) 1. The court ~~or jury~~ finds beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed in par. (f), that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2. The court ~~or jury~~ finds by clear and convincing evidence that active efforts, as described in par. (g) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful.

(g) 1. The court may not order an Indian child to be removed from the home of the Indian child's parent or Indian custodian and placed in an out–of–home care placement unless the evidence of active efforts under par. (d) 2. or (e) 2. shows that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe and that utilizes the available resources of the Indian child's tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian caregivers, and other culturally appropriate service providers. The

consideration by the court ~~or jury~~ of whether active efforts were made under par. (d) 2. or (e) 2. shall include whether all of the following activities were conducted:

NOTE: This SECTION deletes the references related to a jury making findings of fact in a CHIPS or TPR proceeding involving an Indian child, and refers only to a court making the findings of fact.

SECTION 2. 48.20 (8) (a) of the statutes is amended to read:

48.20 **(8)** (a) If a child is held in custody, the intake worker shall notify the child's parent, guardian, legal custodian, and Indian custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, the right to counsel under s. 48.23 regardless of ability to pay, the right to present and cross–examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian, legal custodian, or Indian custodian. The intake worker shall notify both the child and the child's parent, guardian, legal custodian, or Indian custodian.

NOTE: This SECTION requires an intake worker to notify a parent of his or her right to counsel regardless of ability to pay at the same time the intake worker is notifying the parent of the detention hearing if the parent's child is held in custody.

SECTION 3. 48.21 (3) (d) of the statutes is amended to read:

48.21 **(3)** (d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to counsel under s. 48.23 regardless of ability to pay, the right to present, confront, and cross–examine witnesses, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b).

NOTE: This SECTION provides that the court must inform a parent, guardian, legal custodian, or Indian custodian of his or her right to counsel in a CHIPS action during the initial hearing for a child in custody as a result of a CHIPS petition.

SECTION 4. 48.213 (2) (d) of the statutes is amended to read:

48.213 **(2)** (d) Prior to the commencement of the hearing, the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to counsel under s. 48.23 regardless of ability to pay, the right to confront and cross–examine witnesses and the right to present witnesses.

SECTION 5. 48.23 (2) of the statutes is renumbered 48.23 (2) (a).

SECTION 6. 48.23 (2) (bm) of the statutes is created to read:

48.23 **(2)** (bm) If a proceeding involves a child alleged to be in need of protection or services under s. 48.13, and the child has been taken into custody, any nonpetitioning parent who appears before the court shall be represented by counsel throughout the proceeding. The right to be represented by counsel begins with a hearing held under s. 48.21, or anytime after the filing of a petition under s. 48.255 if the child has been taken into custody or the court has

ordered the child placed outside of his or her home. Once begun, the right to be represented by counsel continues throughout all stages of the proceedings. A parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

NOTE: SECTIONS 5 and 6 create a right for a parent, whether minor or adult, to be represented by counsel during a CHIPS proceeding, if the child has been taken into custody. The right begins with the temporary physical custody hearing, or upon the child being taken into custody anytime after the filing of a CHIPS petition, and continues throughout all stages of the proceedings.

SECTION 7. 48.23 (2) (br) of the statutes is created to read:

48.23 **(2)** (br) *Sunset.* Paragraph (bm) does not apply to a proceeding commenced under s. 48.13 or 48.21 after June 30, 2017.

NOTE: This SECTION specifies that the right to counsel for a parent in a CHIPS proceeding sunsets on June 30, 2017.

SECTION 8. 48.23 (3) of the statutes is amended to read:

48.23 **(3)** POWER OF THE COURT TO APPOINT COUNSEL. ~~Except in proceedings under s. 48.13, at~~ At any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. ~~Except as provided in sub. (2g), the court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.~~

NOTE: This SECTION specifies that a juvenile court has the power to appoint counsel to any party involved in a ch. 48 proceeding, not just a child, and makes the statutes consistent with current case law.

SECTION 9. 48.23 (4) of the statutes is renumbered 48.23 (4) (a), (b), and (e) and amended to read:

48.23 **(4)** PROVIDING COUNSEL. (a) ~~If~~ In any situation under sub. (2) (a), if a child or a parent under 18 years of age has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily

waived, the court shall refer the child or parent under 18 years of age to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral. Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child.

(b) In any situation under sub. (2) (a), (2g), or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer the parent or adult expectant mother to the authority for indigency determinations specified under s. 977.07 (1).

(c) In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

NOTE: This SECTION separates current law into paragraphs to distinguish how counsel may be provided in different types of proceedings.

SECTION 10. 48.23 (4) (c) and (d) 1. to 3. of the statutes are created to read:

48.23 **(4)** (c) In any situation under sub. (2) (bm) in which a parent has a right to be represented by counsel, the parent shall be referred as soon as is practicable to the state public

defender, who shall appoint counsel for the parent under s. 977.08 without a determination of indigency.

(d) 1. At or after the conclusion of a proceeding under sub. (2) (bm) in which the state public defender has provided legal counsel for a parent, the court may inquire as to the parent's ability to reimburse the state for the costs of representation. If the court determines that the parent is able to make reimbursement for all or part of the costs of representation, the court may order the parent to reimburse the state an amount not to exceed the maximum amount established by the public defender board under s. 977.075 (4). Upon the court's request, the state public defender shall conduct a determination of indigency under s. 977.07 and report the results of the determination to the court.

2. Reimbursement ordered under this paragraph shall be made to the clerk of courts of the county where the proceedings took place. The clerk of courts shall transmit payments under this section to the county treasurer, who shall deposit 25 percent of the payment amount in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L).

3. By January 31st of each year, the clerk of courts for each county shall report to the state public defender the total amount of reimbursements ordered under subd. 1. in the previous calendar year and the total amount of reimbursements paid to the clerk under subd. 2. in the previous year.

> **NOTE:** This SECTION specifies that a nonpetitioning parent, whether minor or adult, who has a right to counsel in a CHIPS proceeding must be referred as soon as practicable to the SPD, which must appoint counsel for the person without a determination of indigency unless counsel was knowingly and voluntarily waived. This SECTION also specifies that at, or after, the conclusion of a CHIPS proceeding in which the SPD provided counsel, the court may inquire as to the parent's ability

to reimburse the state for the costs of representation in the CHIPS proceeding. If the court determines that the parent was able to reimburse the costs of representation, the court may order the parent to reimburse the state an amount not to exceed the maximum amount established by the SPD board, by rule, for the type of case.

SECTION 11. 48.23 (6) of the statutes is created to read:

48.23 **(6)** By January 1, 2017, the department and the state public defender shall each submit a report to the joint committee on finance, and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), regarding costs and data from implementing a parent's right to counsel under sub. (2) (bm).

NOTE: This SECTION requires DCF and SPD to each submit a report, by January 1, 2017, to the joint committee on finance and each house of the legislature regarding the costs and data from implementing a parent's right to counsel in a CHIPS proceeding.

SECTION 12. 48.235 (6) of the statutes is repealed.

NOTE: This SECTION deletes the reference to explaining a guardian ad litem's role to a jury.

SECTION 13. 48.243 (1) (g) of the statutes is repealed.

NOTE: This SECTION repeals the requirement for an intake worker to inform a parent, expectant mother, or child age 12 or older of the right to a jury trial.

SECTION 14. 48.30 (2) of the statutes is amended to read:

48.30 **(2)** At the commencement of the hearing under this section the child and the parent, guardian, legal custodian, or Indian custodian; the child expectant mother, her parent, guardian, legal custodian, or Indian custodian, and the unborn child through the unborn child's guardian ad litem; or the adult expectant mother and the unborn child through the unborn child's guardian ad litem; shall be advised of their rights as specified in s. 48.243 and shall be informed that a request ~~for a jury trial or~~ for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or is waived. Nonpetitioning parties, including the child,

shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for ~~a jury trial or~~ substitution of a judge.

NOTE: This SECTION eliminates the requirement for a court to advise a party of the right to request a jury trial at the plea hearing in which any party may contest the CHIPS action. It also eliminates the right for a nonpetitioning party to be granted a continuance on the basis of consulting with an attorney on a request for a jury trial.

SECTION 15. 48.31 (2) of the statutes is amended to read:

48.31 **(2)** The hearing 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 that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court ~~or jury~~ shall make a determination of the facts~~, except that~~ and 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.

NOTE: This SECTION deletes the provisions governing the request for a jury trial in a fact–finding hearing under a CHIPS or TPR proceeding.

SECTION 16. 48.31 (4) of the statutes is amended to read:

48.31 **(4)** 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, 48.133 or 48.42, ~~except that the court~~ and 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.

NOTE: This SECTION deletes references related to a jury making findings of fact in a CHIPS or TPR proceeding, and refers only to a court making the findings of fact.

SECTION 17. 48.31 (5) of the statutes is amended to read:

48.31 **(5)** If the child is an Indian child, the court ~~or jury~~ shall also determine at the fact–finding hearing whether continued custody of the Indian child by the Indian child's parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child under s. 48.028 (4) (d) 1. and whether active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family and whether those efforts have proved unsuccessful, unless partial summary judgment on the allegations under s. 48.13 or 48.133 is granted, in which case the court shall make those determinations at the dispositional hearing.

NOTE: This SECTION deletes the reference to a jury making particular findings of fact that are required for an Indian child, and refers only to a court making those findings of fact.

SECTION 18. 48.317 (intro.) and (1) of the statutes are consolidated, renumbered 48.317 and amended to read:

48.317 Jeopardy. (intro.) Jeopardy attaches~~:~~

~~**(1)** In a trial to the court,~~ when a witness is sworn.

SECTION 19. 48.317 (2) of the statutes is repealed.

NOTE: SECTIONS 18 and 19 delete the provision governing when jeopardy attaches in a jury trial, and refer only to when jeopardy attaches in a trial to the court.

SECTION 20. 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~~ shall determine whether grounds exist for the termination of parental rights. If the child is an Indian child, the court ~~or jury~~ shall also

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

NOTE: This SECTION deletes references to a jury determining whether grounds exist for TPR, and refers only to a court making that finding of fact.

SECTION 21. 48.422 (1) of the statutes is amended to read:

48.422 **(1)** Except as provided in s. 48.42 (2g) (ag), 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.

NOTE: This SECTION deletes the requirement for a court to inform the parties of the right to request a jury trial at the initial plea hearing in which it is determined whether a party wishes to contest the TPR proceeding.

SECTION 22. 48.422 (4) of the statutes is repealed.

NOTE: This SECTION repeals the right of a party to request a jury trial in a TPR proceeding.

SECTION 23. 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.

NOTE: This SECTION eliminates the ability for a party in a TPR action to obtain a continuance for the purpose of consulting with an attorney on a request for a jury trial.

SECTION 24. 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 proved, ~~and~~ whether the allegations specified in s. 48.42 (1) (e) have been proved in cases involving the involuntary termination of parental rights to an Indian child. ~~The court shall decide,~~ and what disposition is in the best interest of the child.

NOTE: This SECTION deletes language regarding a jury determining whether any TPR grounds have been proven, as currently allowed. It instead requires a court to make this determination in addition to then determining what disposition is in the best interest of the child.

SECTION 25. 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. Except as provided in s. 48.42 (2g) (ag), 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 any of the following apply:

NOTE: This SECTION deletes the reference to a jury making a determination on the grounds for TPR, and refers only to a court making that determination.

SECTION 26. Nonstatutory provisions; public defender board.

(1) POSITION AUTHORIZATIONS. (a) The authorized FTE positions for the state public defender board are increased by 2 FTE positions funded from the appropriation under section

20.550 (1) (b) of the statutes, for the purposes for which the appropriation is made. The state public defender shall identify the positions.

NOTE: This SECTION increases the number of SPD appellate attorneys by 2 full–time equivalent (FTE) positions for representing a parent appealing a disposition from a contested CHIPS petition.

(b) The authorized FTE positions for the state public defender board are increased by 10 FTE positions funded from the appropriation under section 20.550 (1) (c) of the statutes for the purposes for which the appropriation is made. The state public defender shall identify the positions.

NOTE: This SECTION increases the number of SPD trial attorneys by 10 FTE positions for representing a parent in certain CHIPS proceedings.

SECTION 27. Fiscal changes; public defender board.

(1) APPELLATE REPRESENTATION FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the public defender board under section 20.550 (1) (b) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $209,440 for the first fiscal year of the fiscal biennium in which this subsection takes effect to the purpose for which the appropriation is made.

NOTE: This SECTION increases the SPD's appropriation for appellate representation by $209,440 to fund representation for a parent appealing a disposition from a contested CHIPS petition.

(2) TRIAL REPRESENTATION FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the public defender board under section 20.550 (1) (c) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $851,382 for the first fiscal year of the fiscal biennium in which this subsection takes effect to the purpose for which the appropriation is made.

NOTE: This SECTION increases the SPD's appropriation for trial representation by $851,382 to fund representation for a parent in certain CHIPS proceedings.

(3) PRIVATE BAR AND INVESTIGATOR REIMBURSEMENT FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the public defender board under section 20.550 (1) (d) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $1,904,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to the purpose for which the appropriation is made.

NOTE: This SECTION increases the SPD's appropriation for representation by members of the private bar by $1,904,000 to fund the reimbursement of representing a parent in certain CHIPS proceedings.

(4) PRIVATE BAR AND INVESTIGATOR FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the public defender board under section 20.550 (1) (e) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $125,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to the purpose for which the appropriation is made.

NOTE: This SECTION increases the SPD's appropriation for payments made to members of the private bar by $125,000 to fund representation for a parent in certain CHIPS proceedings.

(5) TRANSCRIPTS, DISCOVERY, AND INTERPRETERS FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the public defender board under section 20.550 (1) (f) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $125,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to the purpose for which the appropriation is made.

NOTE: This SECTION increases the SPD's appropriation by $125,000 for payments made to obtain transcripts, discovery materials, and provide interpreters for clients in certain CHIPS proceedings.

SECTION 28. Initial applicability.

(1) REPRESENTATION IN PROCEEDINGS INVOLVING CHILDREN IN NEED OF PROTECTION OR SERVICES. The treatment of sections 48.20 (8), 48.21 (3) (d), 48.213 (2) (d), 48.23 (3), and

48.23 (4) of the statutes, the renumbering and amendment of section 48.23 (2) of the statutes, and the creation of section 48.23 (2) (bm) of the statutes first applies to proceedings commenced under section 48.13 or 48.21 of the statutes on the effective date of this subsection.

NOTE: This SECTION specifies that a parent's right to counsel and the right to be represented by an SPD in a CHIPS proceeding first apply to a CHIPS proceeding that is commenced on the effective date of the draft.

(2) ELIMINATION OF JURY TRIALS IN PROCEEDINGS UNDER THE CHILDREN'S CODE. The treatment of sections 48.028 (4) (d) 1. and 2., (e) 1. and 2., and (g) 1., 48.235 (6), 48.243 (1) (g), 48.30 (2), 48.31 (2), (4) and (5), 48.317 (intro.), (1) and (2), 48.415 (intro.), 48.422 (1), (4) and (5), and 48.424 (3) and (4) (intro.) of the statutes first applies to a child in need of protection or services, or termination of parental rights, proceeding in which the petition is filed on the effective date of this subsection.

NOTE: This SECTION provides that this draft first applies to a CHIPS or TPR proceeding for which a petition is filed after the draft takes effect as law.

SECTION 29. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.

NOTE: This SECTION delays the effective date of the draft's provisions until the 6th month following publication, if enacted.

(END)