

2019 DRAFTING REQUEST**Bill**

For: **Barbara Dittrich (608) 266-8551** Drafter: **ewheeler**
 By: **Rachel Snyder** Secondary Drafters:
 Date: **5/1/2019** May Contact: **Rachel Snyder @ Leg Council**

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Dittrich@legis.wisconsin.gov**
 Carbon copy (CC) to: **Rachel.Snyder@legis.wisconsin.gov**
Elizabeth.Wheeler@legis.wisconsin.gov
elisabeth.shea@legis.wisconsin.gov
Anne.Sappenfield@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

CHIPS and TPR; grounds, jury trial, permanency plan reviews

Instructions:

Remove jury trial from termination of parental rights proceeding.
 Include 19-3120 and 19-4082.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 5/6/2019	swinder 5/10/2019			
/P1	ewheeler 9/27/2019	swinder 10/1/2019	lparisi 5/10/2019		State S&L
/1			lparisi 10/1/2019	dwalker 10/1/2019	State S&L

FE Sent For:

At Intro

<END>

2019 DRAFTING REQUEST

** New requestor*

Bill

For: **Barbara Dittrich (608) 266-8551** Drafter: **ewheeler**
 By: **Rachel Snyder** Secondary Drafters:
 Date: **5/1/2019** May Contact: **Rachel Snyder @ Leg Council**

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elisabeth.shea@legis.wisconsin.gov
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/?	ewheeler 5/6/2019	swinder 5/10/2019			
/P1	ewheeler		lparisi 5/10/2019		State S&L

FE Sent For: **<END>**

2019 DRAFTING REQUEST

Bill

For: Patrick Snyder (608) 266-0654 Drafter: ewheeler

By: Himself/Storm Secondary Drafters:

Date: 5/1/2019 May Contact: Rachel Snyder @ Leg Council

Same as LRB:

Submit via email: YES

Requester's email: Rep.Snyder@legis.wisconsin.gov

Carbon copy (CC) to: rep.doyle@legis.wisconsin.gov
 Rachel.Snyder@legis.wisconsin.gov
 Elizabeth.Wheeler@legis.wisconsin.gov
 elisabeth.shea@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Remove jury trial from termination of parental rights proceeding

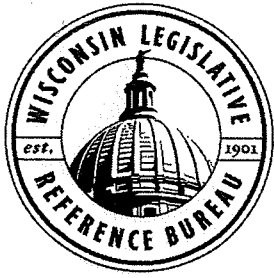
Instructions:

Remove jury trial from termination of parental rights proceeding

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 5/6/2019	swinder 5/10/2019			
/P1			lparisi 5/10/2019		State S&L

FE Sent For: <END>



RESEARCH APPENDIX **A**

Drafting History Reproduction Request Form

Drafting Attorneys: Please complete form below and give to Mike Barman (lead PA).

Requested by	EAW
Date	9/27/19

*Note: Except for companion bills, both drafts should have same requester.

<input type="checkbox"/>	Please transfer the drafting file for:	
2017 LRB		For Rep./Sen.
To the drafting file for:		
2019 LRB		For Rep./Sen.

Done MB

OR

<input checked="" type="checkbox"/>	Please copy the drafting file for:	
2019 LRB	31201	For (Rep./Sen.) Dittich

And place it in the drafting file for:

2019 LRB	3119	For (Rep./Sen.) Dittich
----------	------	-------------------------

Companion bills?	<input type="checkbox"/> YES*	<input checked="" type="checkbox"/> NO
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*If yes, the transfer or copy of the file was authorized by whom in the original requester's office?



→ **B**

RESEARCH APPENDIX

Drafting History Reproduction Request Form

Drafting Attorneys: Please complete form below and give to Mike Barman (lead PA).

Requested by	EAW
Date	9/27/19

*Note: Except for companion bills, both drafts should have same requester.

<input type="checkbox"/>	Please transfer the drafting file for:	
2017 LRB		For Rep./Sen.
To the drafting file for:		
2019 LRB		For Rep./Sen.

Done
gmb

OR

<input checked="" type="checkbox"/>	Please copy the drafting file for:	
2019 LRB	40821	For Rep./Sen. Dittich

And place it in the drafting file for:

2019 LRB	3119	For Rep./Sen. Dittich
Companion bills?	<input type="checkbox"/> YES*	<input checked="" type="checkbox"/> NO

*If yes, the transfer or copy of the file was authorized by whom in the original requester's office?



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3119/2
EAW: ...
SKW+WLJ

in: 5/6
due: 5/10

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

general catalog

1 AN ACT ...; relating to: right to a jury trial in a termination of parental rights
2 proceeding

Analysis by the Legislative Reference Bureau

Under current law, in a proceeding to terminate parental rights (TPR), the court assigned to exercise jurisdiction under the Children's Code must hold a fact-finding hearing to determine if there are any grounds for the TPR. Under current law, any party to a TPR proceeding whose rights may be affected by the TPR order may demand a jury trial for this fact-finding hearing. This bill eliminates the right to a jury trial for the fact-finding hearing.

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:

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

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

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

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:

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109; 2005 a. 277, 293; 2007 a. 45, 116; 2009 a. 94; 2011 a. 257 s. 56; 2011 a. 271; 2015 a. 366; 2017 a. 128, 256.

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.

History: 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 447 ss. 10, 67; 1985 a. 176; 1997 a. 104; 2005 a. 293; 2005 a. 443 s. 265; 2007 a. 186; 2009 a. 28, 94.

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.

History: 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 447 ss. 10, 67; 1985 a. 176; 1997 a. 104; 2005 a. 293; 2005 a. 443 s. 265; 2007 a. 186; 2009 a. 28, 94.

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

1 cases involving the involuntary termination of parental rights to an Indian child.
2 ~~The court shall decide, and~~ what disposition is in the best interest of the child.

History: 1979 c. 330; 1987 a. 383; 2009 a. 94; 2013 a. 337.

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

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

History: 1979 c. 330; 1987 a. 383; 2009 a. 94; 2013 a. 337.

12 **SECTION 9. Initial applicability.**

13 (1) RIGHT TO A JURY TRIAL. This act first applies to a termination of parental
14 rights proceeding for which the petition is filed on the effective date of this
15 subsection.

16 (END)

Wheeler, Elizabeth

From: Linjer, Storm
Sent: Monday, September 23, 2019 10:29 AM
To: Wheeler, Elizabeth
Cc: Matthews, Meagan
Subject: 6 foster care/adoption related bills

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Elizabeth,

I wanted to let you know that we are handing our 6 foster care/adoption related bills over to the Speaker's Task Force on Adoption. That includes LRB 3734/P2, LRB 3120/P1; LRB 3121/P1; LRB 4153/P2; LRB 3119/P2; and LRB 3123/P1.

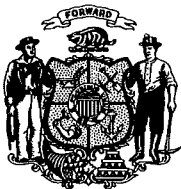
Rachel is still working with us to figure out whether LRB 3123 is drafted in the most practical way (ensuring implementing is reasonably straightforward). You may hear from our office on an amendment yet. In the meantime, if they have questions, want to see the related file, etc. please feel free to share with Rep. Dittrich's office.

Meagan- if you don't have the latest draft of any of these, let me know and I can send it over!

Thanks!

Storm Linjer

Office of Representative Patrick Snyder
85th Assembly District
Room 307 North, State Capitol Building
608-266-0654 (office)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3119/P1
EAW:skw&wj

in 9/27 due 10/1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

insert

Repeal

grounds for finding a child in need of protection or services or for terminating parental rights, and permanency plan reviews

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: right to a jury trial in a termination of parental rights proceeding.

INS-A

Analysis by the Legislative Reference Bureau

Under current law, in a proceeding to terminate parental rights (TPR), the court assigned to exercise jurisdiction under the Children's Code must hold a fact-finding hearing to determine if there are any grounds for the TPR. Under current law, any party to a TPR proceeding whose rights may be affected by the TPR order may demand a jury trial for this fact-finding hearing. This bill eliminates the right to a jury trial for the fact-finding hearing.

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INS 1-4

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5 consist of 6 persons. ~~If a jury trial is demanded in a proceeding under s. 48.42, the~~
6 ~~jury shall consist of 12 persons unless the parties agree to a lesser number.~~ Chapters
7 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim
8 or witness, as defined in s. 950.02, the court may order that a deposition be taken by
9 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to
10 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
11 of the a hearing on a termination of parental rights petition, the court shall make a
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7 or a licensed psychologist appointed by the court to examine the child has testified
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10 afforded. The judge may use the written reports if the right to have testimony
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17 controlled substances, or controlled substance analogs and its medical, personal,
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25 shall also determine at the fact-finding hearing whether continued custody of the

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3-21

1 Indian child by the Indian child's parent or Indian custodian is likely to result in
2 serious emotional or physical damage to the Indian child under s. 48.028 (4) (e) 1. and
3 whether active efforts under s. 48.028 (4) (e) 2. have been made to prevent the
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25 ~~The court shall decide, and~~ and what disposition is in the best interest of the child.

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4-9

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

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

INS
5-10

10 **SECTION 9. Initial applicability.**

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

14 INS 5-14

(END)

INS-A

This bill changes the grounds for finding that a child is in need of protection or services under the children's code and for involuntarily terminating parental rights (TPR), eliminates the right to a jury trial in a TPR proceeding, and changes the process for permanency plan reviews under the Children's code and Juvenile Justice Code.

Grounds for CHIPS

Under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) has exclusive original jurisdiction over a child who is alleged to be in need of protection or services (CHIPS) that can be ordered by the juvenile court and who meets certain grounds. This bill creates a new ground for CHIPS where a child is found to be a drug-affected child. Under the bill, a drug-affected child is defined as a child who suffered prenatal exposure to a controlled substance or a child whose basic needs and safety have been adversely affected by a parent's or guardian's chronic and severe use of alcohol or a controlled substance.

Grounds for TPR

Under current law, in a proceeding for involuntary TPR, the juvenile court must determine whether grounds exist for TPR. One of the grounds for TPR under current law is failure to assume parental responsibility for a child, which is established by proving that the parent or the person who may be the parent of the child has not had a substantial parental relationship with the child. "Substantial parental relationship" is defined in current law as the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. In evaluating whether a person has had a substantial parental relationship with the child, current law allows the juvenile court to consider certain factors, including whether the person has expressed concern for or interest in the support, care, or well-being of the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy.

This bill changes the factor related to expressing concern for or interest in the support, care, and well-being of the child to whether the person has provided care or support for the child. The bill eliminates the factor of whether the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. The bill instead provides that proving that a person who is or may be the father of the child failed to provide care and support for the mother during her pregnancy, without reasonable cause, establishes abandonment of a child, which is a ground for TPR under current law. Also under the bill, proving that a parent has failed without reasonable cause to pay court-ordered payments of child support establishes abandonment of the child.

Other grounds for TPR under current law include 1) continuing need of protection or services (continuing CHIPS), if a child is placed outside of the home for 15 of the last 22 months under a court order; or 2) a continuing denial of periods of physical placement or visitation, if a court order denying physical placement or visitation has been in place for one year. Under current law, the timeline for both of these grounds begins when a court order is entered in a CHIPS or juvenile in need of protection or services (JIPS) proceeding. Under this bill, the timeline for these two grounds can also begin when the court enters an order for temporary custody, when a child or juvenile is placed outside the home under a consent decree, or when a court-approved permanency plan places a child outside the home.

The bill creates a new ground for involuntary TPR where the child is a drug-affected child, which is established by showing that the child has been found to be a drug-affected child in a CHIPS proceeding. Under the bill, parental rights may not be terminated if a parent proves, by a preponderance of the evidence, that he or she enrolled in a substance abuse treatment or recovery program within 90 days of the birth of the child or the placement of the child outside of the home under a CHIPS order, and that he or she continues to maintain substantial compliance with the substance abuse treatment or recovery program.

This bill also creates a new ground for TPR based on parental incarceration, which must be established by proving 1) that the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside the child's home pursuant to one or more court orders containing notice of the grounds for TPR that may be applicable and the conditions necessary for the child to be returned to the home; 2) that the parent is presently incarcerated; and 3) that the parent is likely to be incarcerated for a substantial period of the child's minority. In determining whether the parent is likely to be incarcerated for a substantial period of the child's minority, the court may consider a parent's history of repeated incarceration.

Right to a jury trial

Under current law, in a TPR proceeding, the juvenile court must hold a fact-finding hearing to determine if there are any grounds for the TPR. Under current law, any party to a TPR proceeding whose rights may be affected by the TPR order may demand a jury trial for this fact-finding hearing. This bill eliminates the right to a jury trial for the fact-finding hearing.

Permanency plan reviews

Under current law, within six months after a child is removed from his or her home in a proceeding under the Children's Code or the Juvenile Justice Code and every 12 months after that, the permanency plan is reviewed by the court or by a panel that is appointed by the court or by a child welfare agency. Within six months of the initial review and every 12 months after that, the permanency plan is reviewed in a hearing before the court. Under this bill, the initial six-month review and the reviews done every 12 months after that six-month review are done in a hearing before the court.

juvenile

juvenile

INS 1-4

SECTION 1. 48.02 (5e) of the statutes is created to read:

48.02 (5e) "Drug-affected child" means any of the following:

(a) A child who suffered prenatal exposure to a controlled substance or alcohol, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, a positive result from a toxicology test of the mother or child at the time of the child's birth, or developmental delays or other symptoms during the child's first year of life that have been diagnosed as a fetal alcohol spectrum disorder or as caused by prenatal exposure to a controlled substance.

(b) A child whose basic needs and safety have been adversely affected by a parent's or guardian's chronic and severe use of alcohol or a controlled substance.

SECTION 2. 48.13 (15) of the statutes is created to read:

48.13 (15) The child is a drug-affected child.

INS 3-21

SECTION 3. 48.356 (1) of the statutes is amended to read:

48.356 (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home, or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.21 (4), 48.32, 48.345, 48.347, 48.357, 48.363, or 48.365 and whenever the court reviews a permanency plan under s. 48.38 (5m), the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.

SECTION 4. 48.38[✓] (5) (a) of the statutes is amended to read:

48.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan for each child for whom a permanency plan is required under sub. (2) in the manner provided in this subsection not later than 6 months after the date ~~on which the child was first removed from his or her home~~ of a hearing held under sub. (5m) and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that for the review ~~that is required to be conducted not later than 12 months after the child was first removed from his or her home~~ and the reviews that are required to be conducted every 12 months after ~~that review~~ the initial hearing under sub. (5m), the court shall hold a hearing under sub. (5m) to review the permanency plan, ~~which.~~ The hearing may be instead of or in addition to the review under this subsection. The 6-month and 12-month periods referred to in this paragraph include trial reunifications under s. 48.358.

SECTION 5. 48.38[✓] (5m) (a) of the statutes is amended to read:

48.38 (5m) (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) for each child for whom a permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home. The 6-month and 12-month periods referred to in this paragraph include trial reunifications under s. 48.358.

INS 4-9

SECTION 6. 48.415[✓] (1) (a) 4. of the statutes is created to read:

48.415 (1) (a) 4. That a person who is or may be the father of the child failed without reasonable cause to provide care and support for the mother during her pregnancy.

SECTION 7. 48.415 (1) (a) 5. of the statutes is created to read:

48.415 (1) (a) 5. That the parent has failed without reasonable cause to pay court-ordered payments of child support.

SECTION 8. 48.415 (2) (a) 1. of the statutes is amended to read:

48.415 (2) (a) 1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.21(4), 48.32, 48.345, 48.347, 48.357, 48.363, 48.365, 48.38, 938.21(4), 938.32, 938.345, 938.357, 938.363 or, 938.365, or 938.38 containing the notice required by s. 48.356 (2) or 938.356 (2).

SECTION 9. 48.415 (3m) of the statutes is created to read:

48.415 (3m) PARENTAL INCARCERATION. Parental incarceration, which shall be established by proving all of the following:

(a) That the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, or 48.365 containing the notice required under s. 48.356 (2).

(b) That the parent is incarcerated at the time of the fact-finding hearing.

(c) That the parent is likely to continue to be incarcerated for a substantial period of the child's minority. In determining whether the parent is likely to continue to be incarcerated for a substantial period of the child's minority, the court may consider whether the parent has a history of repeated incarceration.

SECTION 10. 48.415 (4) (a) of the statutes is amended to read:

48.415 (4) (a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.21 (4), 48.32, 48.345, 48.355 (3), 48.363, 48.365, 48.38, 938.21 (4), 938.32, 938.345, 938.363 or, 938.365, or 938.38 containing the notice required by s. 48.356 (2) or 938.356 (2).

SECTION 11. 48.415 (6) (b) of the statutes is amended to read:

48.415 (6) (b) In this subsection, “substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, ~~but not limited to,~~ whether the person has ~~expressed concern for or interest in the provided care or support, care or well-being of~~ for the child, and whether the person has neglected or refused to provide care or support for the child ~~and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.~~

SECTION 12. 48.415 (11) of the statutes is created to read:

48.415 (11) DRUG-AFFECTED CHILD. The child is a drug-affected child, which shall be established by proving that the child has been adjudged to be a child in need of protection or services under s. 48.13 (15), unless the parent proves all of the following by a preponderance of the evidence:

(a) That the parent enrolled in a substance abuse treatment or recovery program within 90 days of the birth of the child or placement of the child outside of the home pursuant to a dispositional order under s. 48.345.

(b) That the parent continues to maintain substantial compliance with a substance abuse treatment or recovery program.

INS 5-10

SECTION 13. 938.356[✓] (1) of the statutes is amended to read:

938.356 (1) ORAL WARNING. Whenever the court orders a juvenile to be placed outside his or her home or denies a parent visitation because the juvenile has been adjudged to be delinquent or to be in need of protection or services under s. 938.21 (4), 938.32[✓], 938.34, 938.345, 938.357, 938.363, or 938.365 and whenever the court reviews a permanency plan under s. 938.38 (5m), the court shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the juvenile to be returned to the home or for the parent to be granted visitation.

SECTION 14. 938.38[✓] (5) (a) of the statutes is amended to read:

938.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan for each juvenile for whom a permanency plan is required under sub. (2) in the manner provided in this subsection not later than 6 months after the date ~~on which the juvenile was first removed from his or her home~~ of a hearing held under sub. (5m)[✓] and every 6 months after a previous review under this subsection for as long as the juvenile is placed outside the home, except that for the review that is required to be conducted not later than ~~12 months after the juvenile was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review~~ the initial hearing under sub. (5m)[✓], the court shall hold a hearing under sub. (5m) to review the permanency plan. The hearing may be instead of or in addition to the

review under this subsection. The 6-month and 12-month periods referred to in this paragraph include trial reunifications under s. 938.358.

SECTION 15. 938.38 (5^m) (a) of the statutes is amended to read:

938.38 (5^m) (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) for each juvenile for whom a permanency plan is required under sub. (2) no later than 12 6 months after the date on which the juvenile was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the juvenile is placed outside the home. The 6-month and 12-month periods referred to in this paragraph include trial reunifications under s. 938.358.

INS 5-10

SECTION 16. Nonstatutory provisions.

(1) PARENTAL INCARCERATION. A court assigned to exercise jurisdiction under ch. 48 may terminate parental rights to a child who was ordered to be placed outside the home before the effective date of this subsection on the grounds specified under s. 48.41⁵ (3^m) notwithstanding that the parent was not notified of those grounds under s. 48.35⁶ (2) when that placement was ordered so long as the parent is notified of those grounds under s. 48.3⁵⁶ (2) before the filing of the termination of parental rights petition.

INS 5-14

(2) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of s. 48.1³ (15) first applies to a petition filed under s. 48.1³ on the effective date of this subsection.

(3) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. The treatment of s. 48.41⁵ (11) first applies to court orders required to contain the

notice under s. 48.356[✓] (2) or 938.356[✓] (2) granted on the effective date of this subsection.

(4) PERMANENCY PLAN REVIEWS. The treatment of ss. 48.38[✓] (5) (a) and (5m)[✓] (a) and 938.38[✓] (5) (a) and (5m)[✓] (a) first applies to a permanency plan that is filed with the court under s. 48.38[✓] (3) or 938.38[✓] (3) on the effective date of this subsection.

(5) PARENTAL INCARCERATION. This act first applies to a petition for termination of parental rights filed on the effective date of this subsection.

Walker, Dan

From: Matthews, Meagan
Sent: Tuesday, October 01, 2019 3:21 PM
To: LRB.Legal
Subject: Draft Review: LRB -3119/1

Please Jacket LRB -3119/1 for the ASSEMBLY.