



1995 SENATE BILL 68

February 14, 1995 - Introduced by Senators ROSENZWEIG, DARLING, BURKE and FITZGERALD, cosponsored by Representatives LADWIG, KRUSICK, KLUSMAN, DUFF, ZIEGELBAUER, DOBYNS, GOETSCH, UNDERHEIM, KREIBICH, LAZICH, HASENOHRL, SILBAUGH, HAHN, WARD, OWENS and OURADA. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.21 (3), 48.255 (1) (e), 48.30 (3), 48.31 (1), 48.31 (2) and 48.31
2 (4) of the statutes; **relating to:** determining whether a child who is alleged to
3 be in need of protection or services needs protection or services that can be
4 ordered by a juvenile court.

Analysis by the Legislative Reference Bureau

Under current law, the court assigned to exercise jurisdiction under the children's code (juvenile court) has jurisdiction over a petition alleging that a child is in need of protection or services, which the juvenile court can order, and alleging that the child meets one of several jurisdictional grounds such as abandonment, abuse or neglect as provided in the children's code ("CHIPS petition"). Currently, the child who is the subject of a CHIPS petition or the child's parent, guardian or legal custodian may demand a jury trial to determine whether the allegations of the CHIPS petition are proved. This bill provides that the juvenile court, not the jury, determines whether the child needs protection or services which the juvenile court can order, leaving to the jury the task of determining whether the underlying grounds for jurisdiction such as abandonment, abuse or neglect have been proved.

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:

5 **SECTION 1.** 48.21 (3) of the statutes is amended to read:
6 **48.21 (3) PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES.**
7 Proceedings concerning a child who comes within the jurisdiction of the court under

1 s. 48.13 (1) to (5) ~~or~~, (8) to ~~(11)~~ (11m), (13) or (14) shall be conducted according to this
2 subsection.

3 **SECTION 2.** 48.255 (1) (e) of the statutes is amended to read:

4 48.255 (1) (e) If the child is alleged to come within the provisions of s. 48.13 (1)
5 to ~~(11)~~ (11m), (13) or (14) or 48.14, reliable and credible information which forms the
6 basis of the allegations necessary to invoke the jurisdiction of the court and to provide
7 reasonable notice of the conduct or circumstances to be considered by the court
8 together with a statement that the child is in need of supervision, services, care or
9 rehabilitation.

10 **SECTION 3.** 48.30 (3) of the statutes is amended to read:

11 48.30 (3) If a petition alleges that a child is in need of protection or services
12 under s. 48.13 (1) to ~~(11)~~ (11m), (13) or (14), the nonpetitioning parties and the child,
13 if he or she is 12 years of age or older or is otherwise competent to do so, shall state
14 whether they desire to contest the petition.

15 **SECTION 4.** 48.31 (1) of the statutes is amended to read:

16 48.31 (1) In this section, "fact-finding hearing" means a hearing to determine
17 if the allegations of a petition under s. 48.12 or 48.13 (12) are supported beyond a
18 reasonable doubt or a hearing to determine if the allegations in a petition or citation
19 under s. 48.125 or 48.13 (1) to ~~(11)~~ (11m), (13) or (14) or a petition to terminate
20 parental rights are proved by clear and convincing evidence.

21 **SECTION 5.** 48.31 (2) of the statutes is amended to read:

22 48.31 (2) The hearing shall be to the court unless the child, parent, guardian
23 or legal custodian exercises the right to a jury trial by demanding a jury trial at any
24 time before or during the plea hearing. Chapters 756 and 805 shall govern the
25 selection of jurors except that ss. 972.03 and 972.04 shall apply in cases in which the

1 juvenile is alleged to be delinquent under s. 48.12. If the hearing involves a child
2 victim or witness, as defined in s. 950.02, the court may order the taking and allow
3 the use of a videotaped deposition under s. 967.04 (7) to (10) and, with the district
4 attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or
5 jury shall make a determination of the facts, except that in a case alleging a child to
6 be in need of protection or services under s. 48.13 the court shall make a
7 determination relating to whether the child is in need of protection or services which
8 can be ordered by the court. If the court finds that the child is not within the
9 jurisdiction of the court or, in a case alleging a child to be in need of protection or
10 services under s. 48.13, that the child is not in need of protection or services which
11 the court can order or if the court or jury finds that the facts alleged in the petition
12 or citation have not been proved, the court shall dismiss the petition or citation with
13 prejudice.

14 **SECTION 6.** 48.31 (4) of the statutes is amended to read:

15 48.31 (4) The court or jury shall make findings of fact and the court shall make
16 conclusions of law relating to the allegations of a petition filed under s. 48.13 (1) to
17 (11m), (13) or (14), except that the court shall make findings of fact relating to
18 whether the child is in need of protection or services which can be ordered by the
19 court. In cases alleging a child to be in need of protection or services under s. 48.13
20 (11), the court shall not find that the child is suffering serious emotional damage
21 unless a licensed physician specializing in psychiatry or a licensed psychologist
22 appointed by the court to examine the child has testified at the hearing that in his
23 or her opinion the condition exists, and adequate opportunity for the
24 cross-examination of the physician or psychologist has been afforded. The judge
25 may use the written reports if the right to have testimony presented is voluntarily,

1 knowingly and intelligently waived by the guardian ad litem or legal counsel for the
2 child and the parent or guardian. In cases alleging a child to be in need of protection
3 and services under s. 48.13 (11m), the court shall not find that the child is in need
4 of treatment and education for needs and problems related to the use or abuse of
5 alcohol beverages or controlled substances and its medical, personal, family or social
6 effects unless an assessment for alcohol and other drug abuse that conforms to the
7 criteria specified under s. 48.547 (4) has been conducted by an approved treatment
8 facility. In cases alleging a child delinquent or in need of protection or services under
9 s. 48.13 (12) the court shall make findings relating to the proof of the violation of law
10 and to the proof that the child named in the petition committed the violation alleged.
11 In cases alleging a child to be in need of protection or services under s. 48.13 (12) the
12 court shall also make findings of fact relating to whether the child is in need of
13 protection or services which can be ordered by the court.

14 **SECTION 7. Initial applicability.**

15 (1) This act first applies to petitions alleging a child to be in need of protection
16 or services filed on the effective date of this subsection.

17 (END)