



1995 SENATE BILL 95

March 8, 1995 - Introduced by Senators DARLING, ROSENZWEIG, A. LASEE, RUDE, WEEDEN and SCHULTZ, cosponsored by Representatives SILBAUGH, GOETSCH, MUSSER, SCHNEIDERS, KREIBICH, ZIEGELBAUER, DUFF, UNDERHEIM, JENSEN, SERATTI, RILEY and KLUSMAN. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 48.422 (4); *to amend* 48.31 (2), 48.415 (intro.), 48.422 (1),
2 48.422 (5), 48.424 (2) (a), 48.424 (3) and 48.424 (4) (intro.); and *to create* 48.424
3 (2) (c) of the statutes; **relating to:** jury trials in termination of parental rights
4 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 TRP order may demand a jury trial to determine if there are any grounds for TPR. This bill eliminates the right to a jury trial in TPR proceedings.

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.** 48.31 (2) of the statutes is amended to read:
6 48.31 (2) The A hearing on a termination of parental rights petition shall be
7 to the court. A hearing on a petition under s. 48.12, 48.125 or 48.13 or a citation under
8 s. 48.125 shall be to the court unless the child, parent, guardian or legal custodian
9 exercises the right to a jury trial by demanding a jury trial at any time before or
10 during the plea hearing. Chapters 756 and 805 shall govern the selection of jurors

1 except that ss. 972.03 and 972.04 shall apply in cases in which the juvenile is alleged
2 to be delinquent under s. 48.12. If the hearing involves a child victim or witness, as
3 defined in s. 950.02, the court may order the taking and allow the use of a videotaped
4 deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with
5 s. 971.105. At the conclusion of the hearing, the court or jury shall make a
6 determination of the facts. If the court finds that the child is not within the
7 jurisdiction of the court or the court or jury finds that the facts alleged in the petition
8 or citation have not been proved, the court shall dismiss the petition or citation with
9 prejudice.

10 **SECTION 2.** 48.415 (intro.) of the statutes is amended to read:

11 **48.415 Grounds for involuntary termination of parental rights.**

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

15 **SECTION 3.** 48.422 (1) of the statutes is amended to read:

16 48.422 (1) The hearing on the petition to terminate parental rights shall be
17 held within 30 days after the petition is filed. At the hearing on the petition to
18 terminate parental rights the court shall determine whether any party wishes to
19 contest the petition and inform the parties of their rights under ~~sub. (4) and~~ s. 48.423.

20 **SECTION 4.** 48.422 (4) of the statutes is repealed.

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

22 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
23 continuance of the hearing for the purpose of consulting with an attorney ~~on the~~
24 request for a jury trial ~~or~~ concerning a request for the substitution of a judge.

25 **SECTION 6.** 48.424 (2) (a) of the statutes is amended to read:

1 48.424 (2) (a) The court may exclude the child from the hearing; and,

2 **SECTION 7.** 48.424 (2) (c) of the statutes is created to read:

3 48.424 (2) (c) There is no right to a jury trial.

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

5 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
6 shall decide whether any grounds for the termination of parental rights have been
7 proven. ~~The court shall decide~~ and what disposition is in the best interest of the child.

8 **SECTION 9.** 48.424 (4) (intro.) of the statutes is amended to read:

9 48.424 (4) (intro.) If grounds for the termination of parental rights are found
10 by the court ~~or jury~~, the court shall find the parent unfit. A finding of unfitness shall
11 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
12 immediately to hear evidence and motions related to the dispositions enumerated in
13 s. 48.427. The court may delay making the disposition and set a date for a
14 dispositional hearing no later than 45 days after the fact-finding hearing if:

15 **SECTION 10. Initial applicability.**

16 (1) This act first applies to termination of parental rights hearings under
17 section 48.422 (1) of the statutes, as affected by this act, held on the effective date of
18 this subsection.

19 (END)