



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4004/1
GMM:ahc

2015 ASSEMBLY BILL 1012

March 29, 2016 - Introduced by Representatives GOYKE, BARNES, ZAMARRIPA, BROSTOFF, JOHNSON and ZEPNICK. Referred to Committee on Family Law.

1 **AN ACT** *to renumber and amend* 48.23 (4); *to amend* 48.20 (8) (a), 48.21 (3) (d),
2 48.213 (2) (d), 48.23 (3) and 977.075 (4); and *to create* 48.23 (2) (d), 48.23 (4)
3 (c) and 48.23 (6) of the statutes; **relating to:** the right of a parent to have
4 counsel in a proceeding for a child alleged to be in need of protection or services;
5 the power of the juvenile court to appoint counsel in such a proceeding; granting
6 rule-making authority; and making appropriations.

Analysis by the Legislative Reference Bureau

This bill permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to appoint counsel for any party to a child in need of protection or services (CHIPS) proceeding. Current law prohibits the juvenile court from appointing counsel for any party to a CHIPS proceeding, other than the child, but that prohibition was ruled unconstitutional by the Wisconsin Supreme Court in *Joni B. v. State*, 202 Wis. 2d 1 (1996).

The bill also requires a parent of a child who is the subject of a CHIPS proceeding to be represented by counsel in the proceeding, if the child has been taken into custody or ordered to be placed outside of his or her home. In that situation, the parent must be referred to the State Public Defender, who must appoint counsel for the parent without a determination of indigency. The juvenile court may, however, order the parent to reimburse the state for all or part of the costs of that representation at the conclusion of the proceeding. These provisions sunset on June 30, 2019.

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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:

1 **SECTION 1.** 48.20 (8) (a) of the statutes is amended to read:

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

18 **SECTION 2.** 48.21 (3) (d) of the statutes is amended to read:

19 48.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
20 the parent, guardian, legal custodian, or Indian custodian of the allegations that
21 have been made or may be made, the nature and possible consequences of this

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1 hearing as compared to possible future hearings, the right to counsel under s. 48.23
2 regardless of ability to pay, the right to present, confront, and cross-examine
3 witnesses, and, in the case of a parent or Indian custodian of an Indian child who is
4 the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right
5 to counsel under s. 48.028 (4) (b).

6 **SECTION 3.** 48.213 (2) (d) of the statutes is amended to read:

7 48.213 (2) (d) Prior to the commencement of the hearing, the court shall inform
8 the adult expectant mother and the unborn child's guardian ad litem ~~shall be~~
9 ~~informed by the court~~ of the allegations that have been made or may be made, the
10 nature and possible consequences of this hearing as compared to possible future
11 hearings, the right to counsel under s. 48.23 regardless of ability to pay, and the right
12 to present, confront, and cross-examine witnesses, ~~and the right to present~~
13 ~~witnesses~~.

14 **SECTION 4.** 48.23 (2) (d) of the statutes is created to read:

15 48.23 (2) (d) If a proceeding involves a child alleged to be in need of protection
16 or services under s. 48.13, and the child has been taken into custody or ordered to be
17 placed outside of his or her home, any nonpetitioning parent who appears before the
18 court shall be represented by counsel throughout the proceeding. The right to be
19 represented by counsel begins with a hearing held under s. 48.21, or anytime after
20 the filing of a petition under s. 48.255 if the child has been taken into custody or the
21 court has ordered the child placed outside of his or her home. Once begun, the right
22 to be represented by counsel continues throughout all stages of the proceedings. A
23 parent may waive counsel if the court is satisfied that the waiver is knowingly and
24 voluntarily made. This paragraph does not apply to a proceeding commenced under
25 s. 48.13 or 48.21 after June 30, 2019.

ASSEMBLY BILL 1012**SECTION 5**

1 **SECTION 5.** 48.23 (3) of the statutes is amended to read:

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

7 **SECTION 6.** 48.23 (4) of the statutes is renumbered 48.23 (4) (a) and amended
8 to read:

9 48.23 (4) PROVIDING COUNSEL. (a) ~~If~~ In any situation under this section, if a child
10 or a parent under 18 years of age has a right to be represented by counsel or is
11 provided counsel at the discretion of the court under this section and counsel is not
12 knowingly and voluntarily waived, the court shall refer the child or parent under 18
13 years of age to the state public defender and counsel shall be appointed by the state
14 public defender under s. 977.08 without a determination of indigency. If the referral
15 is of a child who has filed a petition under s. 48.375 (7), the state public defender shall
16 appoint counsel within 24 hours after that referral. Any counsel appointed in a
17 petition filed under s. 48.375 (7) shall continue to represent the child in any appeal
18 brought under s. 809.105 unless the child requests substitution of counsel or
19 extenuating circumstances make it impossible for counsel to continue to represent
20 the child.

21 (b) In any situation under sub. (2), (2g), or (2m) in which a parent 18 years of
22 age or over or an adult expectant mother is entitled to representation by counsel;
23 counsel is not knowingly and voluntarily waived; and it appears that the parent or
24 adult expectant mother is unable to afford counsel in full, or the parent or adult

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1 expectant mother so indicates; the court shall refer the parent or adult expectant
2 mother to the authority for indigency determinations specified under s. 977.07 (1).

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

9 **SECTION 7.** 48.23 (4) (c) of the statutes is created to read:

10 48.23 (4) (c) 1. In any situation under sub. (2) (d) in which a parent has a right
11 to be represented by counsel, the parent shall be referred as soon as is practicable
12 to the state public defender, who shall appoint counsel for the parent under s. 977.08
13 without a determination of indigency.

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

23 3. Reimbursement ordered under subd. 2. shall be made to the clerk of courts
24 of the county where the proceedings took place. The clerk of courts shall transmit
25 payments under this section to the county treasurer, who shall deposit 25 percent of

ASSEMBLY BILL 1012**SECTION 7**

1 the payment amount in the county treasury and transmit the remainder to the
2 secretary of administration. Payments transmitted to the secretary of
3 administration shall be deposited in the general fund and credited to the
4 appropriation account under s. 20.550 (1) (L).

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

9 5. This paragraph does not apply to a proceeding commenced under. s. 48.13
10 or 48.21 after June 30, 2019.

11 **SECTION 8.** 48.23 (6) of the statutes is created to read:

12 48.23 (6) By January 1, 2019, the department and the state public defender
13 shall each submit a report to the joint committee on finance, and to the chief clerk
14 of each house of the legislature for distribution to the appropriate standing
15 committees under s. 13.172 (3), regarding costs and data from implementing a
16 parent's right to counsel under sub. (2) (d).

17 **SECTION 9.** 977.075 (4) of the statutes is amended to read:

18 977.075 (4) The board shall establish by rule a fee schedule that sets the
19 maximum amount that a parent subject to s. 48.23 (4) (c), 48.275 (2) (b), or 938.275
20 (2) (b) shall pay as reimbursement for legal services and sets the maximum amount
21 that a person subject to s. 51.605 or 55.107 shall pay as reimbursement for legal
22 services. The maximum amounts under this subsection shall be based on the
23 average cost, as determined by the board, for each applicable type of case.

24 **SECTION 10. Fiscal changes; Public Defender Board.**

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1 (1) APPELLATE REPRESENTATION. In the schedule under section 20.005 (3) of the
2 statutes for the appropriation to the public defender board under section 20.550 (1)
3 (b) of the statutes, as affected by the acts of 2015, the dollar amount for fiscal year
4 2016-17 is increased by \$209,500 to increase the authorized FTE positions for the
5 public defender board by 2.0 GPR attorney positions and to otherwise fund the cost
6 of appellate representation.

7 (2) TRIAL REPRESENTATION. In the schedule under section 20.005 (3) of the
8 statutes for the appropriation to the public defender board under section 20.550 (1)
9 (c) of the statutes, as affected by the acts of 2015, the dollar amount for fiscal year
10 2016-17 is increased by \$851,400 to increase the authorized FTE positions for the
11 public defender board by 10.0 GPR attorney positions and to otherwise fund the cost
12 of trial representation provided by the public defender board.

13 (3) PRIVATE BAR AND INVESTIGATOR REIMBURSEMENT. In the schedule under section
14 20.005 (3) of the statutes for the appropriation to the public defender board under
15 section 20.550 (1) (d) of the statutes, as affected by the acts of 2015, the dollar amount
16 for fiscal year 2016-17 is increased by \$1,904,000 for the purpose for which the
17 appropriation is made.

18 (4) PRIVATE BAR AND INVESTIGATOR PAYMENTS. In the schedule under section
19 20.005 (3) of the statutes for the appropriation to the public defender board under
20 section 20.550 (1) (e) of the statutes, as affected by the acts of 2015, the dollar amount
21 for fiscal year 2016-17 is increased by \$125,000 for the purpose for which the
22 appropriation is made.

23 (5) TRANSCRIPTS, DISCOVERY, AND INTERPRETERS. In the schedule under section
24 20.005 (3) of the statutes for the appropriation to the public defender board under
25 section 20.550 (1) (f) of the statutes, as affected by the acts of 2015, the dollar amount

ASSEMBLY BILL 1012**SECTION 10**

1 for fiscal year 2016-17 is increased by \$125,000 for the purpose for which the
2 appropriation is made.

3 **SECTION 11. Initial applicability.**

4 (1) REPRESENTATION IN PROCEEDINGS INVOLVING CHILDREN IN NEED OF PROTECTION
5 OR SERVICES. The treatment of sections 48.20 (8) (a), 48.21 (3) (d), 48.213 (2) (d), 48.23
6 (2) (d) and (3), and 977.075 (4) of the statutes, the renumbering and amendment of
7 section 48.23 (4) of the statutes, and the creation of section 48.23 (4) (c) of the statutes
8 first apply to proceedings commenced under section 48.13 or 48.21 of the statutes on
9 the effective date of this subsection.

10 **SECTION 12. Effective date.**

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

13 (END)