



2003 ASSEMBLY BILL 784

February 2, 2004 - Introduced by Representatives WASSERMAN, JESKEWITZ, BERCEAU and GIELOW, cosponsored by Senator ROESSLER. Referred to Committee on Family Law.

1 **AN ACT to amend** 48.243 (1) (g), 48.30 (2), 48.31 (2) and 48.31 (4) of the statutes;
2 **relating to:** the right to a trial by jury in a child in need of protection or services
3 proceeding under the Children's Code.

Analysis by the Legislative Reference Bureau

Under current law, a party to a child in need of protection or services (CHIPS) proceeding under the Children's Code may request a trial by jury. This bill eliminates jury trials in CHIPS 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:

4 **SECTION 1.** 48.243 (1) (g) of the statutes is amended to read:
5 48.243 (1) (g) The right to a jury trial, if the inquiry is in regard to the need of
6 an unborn child for protection or services.

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

ASSEMBLY BILL 784**SECTION 2**

1 48.30 (2) At the commencement of the hearing under this section the child and
2 the parent, guardian, or legal custodian, the child expectant mother, her parent,
3 guardian, or legal custodian, and the unborn child through the unborn child's
4 guardian ad litem, or the adult expectant mother and the unborn child through the
5 unborn child's guardian ad litem, shall be advised of their rights as specified in s.
6 48.243 and shall be informed that a request for a jury trial or for a substitution of
7 judge under s. 48.29 must be made before the end of the plea hearing or be waived.
8 If the petition alleges that an unborn child is in need of protection or services, the
9 child expectant mother, her parent, guardian, or legal custodian, and the unborn
10 child through the unborn child's guardian ad litem, or the adult expectant mother
11 and the unborn child through the unborn child's guardian ad litem, shall also be
12 informed that a request for a jury trial must be made before the end of the plea
13 hearing or be waived. Nonpetitioning parties, including the child, shall be granted
14 a continuance of the plea hearing if they wish to consult with an attorney on the
15 request for a jury trial or substitution of a judge.

16 **SECTION 3.** 48.31 (2) of the statutes is amended to read:

17 48.31 (2) The hearing in a proceeding under s. 48.13 shall be to the court. The
18 hearing in a proceeding under s. 48.133 or 48.42 shall be to the court unless the child,
19 the child's parent, guardian, or legal custodian, the unborn child by the unborn
20 child's guardian ad litem, or the expectant mother of the unborn child exercises the
21 right to a jury trial by demanding a jury trial at any time before or during the plea
22 hearing. If a jury trial is demanded in a proceeding under s. ~~48.13~~ or 48.133, the jury
23 shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42,
24 the jury shall consist of 12 persons unless the parties agree to a lesser number.
25 Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a

ASSEMBLY BILL 784

1 child victim or witness, as defined in s. 950.02, the court may order the taking and
2 allow the use of a videotaped deposition under s. 967.04 (7) to (10) and, with the
3 district attorney, shall comply with s. 971.105. At the conclusion of the hearing in
4 a proceeding under s. 48.13, the court shall make a determination of the facts. At the
5 conclusion of the hearing in a proceeding under s. 48.133 or 48.42, the court or jury
6 shall make a determination of the facts, except that in a case ~~alleging a child or an~~
7 ~~unborn child to be in need of protection or services~~ proceeding under s. 48.13 or
8 48.133, the court shall make the determination under s. 48.13 ~~(intro.)~~ or 48.133
9 relating to whether the ~~child or~~ unborn child is in need of protection or services that
10 can be ordered by the court. If the court finds that the child or unborn child is not
11 within the jurisdiction of the court or, in a case ~~alleging a child or an unborn child~~
12 ~~to be in need of protection or services~~ proceeding under s. 48.13 or 48.133, that the
13 child or unborn child is not in need of protection or services that can be ordered by
14 the court, or if the court or jury, in a proceeding under s. 48.133 the court or jury, finds
15 that the facts alleged in the petition have not been proved, the court shall dismiss
16 the petition with prejudice.

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

18 48.31 (4) The court shall make findings of fact and conclusions of law relating
19 to the allegations of a petition filed under s. 48.13. The court or jury shall make
20 findings of fact and the court shall make conclusions of law relating to the allegations
21 of a petition filed under s. 48.13, 48.133 or 48.42, except that in a proceeding under
22 s. 48.133 the court shall make findings of fact relating to whether the ~~child or~~ unborn
23 child is in need of protection or services which can be ordered by the court. In cases
24 alleging a child to be in need of protection or services under s. 48.13 (11), the court
25 may not find that the child is suffering emotional damage unless a licensed physician

ASSEMBLY BILL 784

1 specializing in psychiatry or a licensed psychologist appointed by the court to
2 examine the child has testified at the hearing that in his or her opinion the condition
3 exists, and adequate opportunity for the cross-examination of the physician or
4 psychologist has been afforded. The judge may use the written reports if the right
5 to have testimony presented is voluntarily, knowingly, and intelligently waived by
6 the guardian ad litem or legal counsel for the child and the parent or guardian. In
7 cases alleging a child to be in need of protection or services under s. 48.13 (11m) or
8 an unborn child to be in need of protection or services under s. 48.133, the court may
9 not find that the child or the expectant mother of the unborn child is in need of
10 treatment and education for needs and problems related to the use or abuse of alcohol
11 beverages, controlled substances, or controlled substance analogs and its medical,
12 personal, family, or social effects unless an assessment for alcohol and other drug
13 abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted
14 by an approved treatment facility.

SECTION 5. Initial applicability.

15
16 (1) This act first applies to a child in need of protection or services proceeding
17 in which the petition is filed on the effective date of this subsection.

18 (END)