

1987 Assembly Bill 978

Date of enactment: April 23, 1988
Date of publication: May 2, 1988

1987 Wisconsin Act 383

AN ACT to repeal 48.415 (4) (c) and 48.91 (2) (b); to renumber 48.91 (2) (a); to amend subchapter X (title) of chapter 48, 48.01 (1) (g), 48.23 (1) (d), 48.355 (2) (b) 6, 48.365 (2m) (a), 48.38 (6) (c), 48.41 (2) (a) and (b), 48.415 (intro.), 48.415 (2) (b) and (c), 48.415 (4) (a) and (b), 48.415 (6) (a) 2 and (b), 48.42 (4) (a), 48.424 (4) (intro.), 48.43 (1) (intro.) and 48.43 (6); to repeal and recreate 48.81; and to create 48.01 (1) (gg) and (gr), 48.23 (1) (e), 48.355 (2c), 48.38 (5) (c) 7, 48.465 and 767.24 (4) (cm) of the statutes, relating to actions affecting the family, termination of parental rights, adoption and permanency planning for children.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.01 (1) (g) of the statutes is amended to read:

48.01 (1) (g) To provide children in the state with permanent and stable family relationships. The courts and agencies responsible for child welfare should assist parents in changing any circumstances in the home which might harm the child or which may require the child to be placed outside the home. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their return to the family.

SECTION 2. 48.01 (1) (gg) and (gr) of the statutes are created to read:

48.01 (1) (gg) To promote the adoption of children into stable families rather than allowing children to remain in the impermanence of foster care.

(gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued and termination of parental rights is in the best interest of the child.

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

48.23 (1) (d) If Except as provided in par. (e), if a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, the court shall appoint legal counsel or a guardian ad litem for the child.

SECTION 4. 48.23 (1) (e) of the statutes is created to read:

48.23 (1) (e) If a child is being adopted by his or her stepparent, the court is not required to appoint legal counsel or a guardian ad litem for the child in the adoption proceedings.

SECTION 5. 48.355 (2) (b) 6 of the statutes is amended to read:

48.355 (2) (b) 6. If the child is placed outside the home, the court's finding as to whether ~~there have been a county department which provides social services or the agency primarily responsible for the provision of services under a court order has made~~ reasonable efforts to prevent the removal of the child from the home or, if applicable, that ~~the agency primarily responsible for the provision of services under a court order has made~~ reasonable efforts ~~have been made~~ to make it possible for the child to return to his or her home.

SECTION 6. 48.355 (2c) of the statutes is created to read:

48.355 (2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6 as to whether a county department which provides social services or the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's welfare effectively in the home.

2. Financial assistance, if applicable, was provided to the family.

3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:

a. In-home support services, such as homemakers and parent aides.

b. In-home intensive treatment services.

c. Community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services.

d. Specialized services for family members with special needs.

4. Monitoring of client progress and client participation in services was provided.

5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6 as to whether the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, the considerations listed under par. (a) 1 to 5 and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

SECTION 7. 48.365 (2m) (a) of the statutes is amended to read:

48.365 (2m) (a) Any party may present evidence relevant to the issue of extension. The judge shall make findings of fact and conclusions of law based on the evidence, including a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home. An order shall be issued under s. 48.355.

SECTION 8. 48.38 (5) (c) 7 of the statutes is created to read:

48.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home.

SECTION 9. 48.38 (6) (c) of the statutes is amended to read:

48.38 (6) (c) Standards for reasonable efforts to prevent placement of children outside of their homes and to make it possible for children to return to their homes if they have been placed outside of their homes.

SECTION 10. 48.41 (2) (a) and (b) of the statutes are amended to read:

48.41 (2) (a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary; or

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before an embassy or consul official, a military judge or a judge of any court of record in another county or state or a foreign jurisdiction. This written consent shall be accompanied by the signed findings of the embassy or consul official or judge who accepted the parent's consent. These findings shall recite that the embassy or consul official or judge or an attorney who represents any of the parties questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

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

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

SECTION 12. 48.415 (2) (b) and (c) of the statutes are amended to read:

48.415 (2) (b) That the agency responsible for the care of the child and the family has made a diligent

effort to provide the services ~~required~~ ordered by the court.

(c) That the child has been outside the home for a cumulative total period of one year or longer pursuant to such orders, the parent has substantially neglected, wilfully refused or been unable to ~~remedy~~ meet the conditions ~~which resulted in the removal~~ established for the return of the child from to the home and there is a substantial likelihood that the parent will not ~~remedy~~ meet these conditions in the future.

SECTION 13. 48.415 (4) (a) and (b) of the statutes, as affected by 1987 Wisconsin Act (Assembly Bill 205), are amended to read:

48.415 (4) (a) The parent has been denied periods of physical placement by court order in an action affecting the family; and

(b) ~~At least 2 years have~~ one year has elapsed since the order denying periods of physical placement was issued and the court has not subsequently modified its order so as to permit periods of physical placement; and.

SECTION 14. 48.415 (4) (c) of the statutes, as affected by 1987 Wisconsin Act (Assembly Bill 205), is repealed.

SECTION 15. 48.415 (6) (a) 2 and (b) of the statutes are amended to read:

48.415 (6) (a) 2. That although paternity to the child has been adjudicated under s. 48.423, the father did not establish a substantial parental relationship with the child prior to the adjudication of paternity although the father had reason to believe that he was the father of the child and ~~had an opportunity to establish a substantial parental relationship with~~ has never assumed parental responsibility for the child.

(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 ever expressed concern for or interest in the support, care or well-being of the child or the mother during her pregnancy and whether the person has neglected or refused to provide care or support ~~even though the person had the opportunity and ability to do so.~~

SECTION 16. 48.42 (4) (a) of the statutes is amended to read:

48.42 (4) (a) *Personal service.* A copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least ~~10~~ 7 days before the date of the hearing, except that service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

SECTION 16m. 48.424 (4) (intro.) of the statutes is amended to read:

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

SECTION 17. 48.43 (1) (intro.) of the statutes is amended to read:

48.43 (1) (intro.) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. ~~The~~ If the court dismisses the petition under s. 48.427 (2), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427 (3) or (4), the order shall contain all of the following:

SECTION 18. 48.43 (6) of the statutes, as affected by Supreme Court Order effective July 1, 1987, is amended to read:

48.43 (6) Judgments under this subchapter terminating parental rights are final ~~and~~, appealable under s. 808.03 (1) and given preference for appeal under s. 48.465.

SECTION 19. Subchapter X (title) of chapter 48 of the statutes, as affected by Supreme Court Order effective July 1, 1987, is amended to read:

CHAPTER 48

SUBCHAPTER X

REHEARING AND APPEAL

SECTION 20. 48.465 of the statutes is created to read:

48.465 Adoption and termination of parental rights appeals given preference. An appeal from a judgment terminating or denying termination of parental rights or granting or denying an adoption shall be given preference.

SECTION 21. 48.81 of the statutes is repealed and recreated to read:

48.81 Who may be adopted. Any minor who meets all of the following criteria may be adopted:

(a) Except as provided under s. 48.839 (3) (b), a minor whose parental rights have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(b) A minor who is present within this state at the time the petition for adoption is filed.

SECTION 22. 48.91 (2) (a) of the statutes is renumbered 48.91 (2).

SECTION 23. 48.91 (2) (b) of the statutes is repealed.

SECTION 23m. 767.24 (4) (cm) of the statutes is created to read:

767.24 (4) (cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under s. 48.356.

SECTION 25. Initial applicability. (1) **CIRCUIT COURTS.** (a) *Permanency planning reviews.* The treatment of section 48.38 (5) (c) 7 of the statutes applies to permanency plan reviews conducted on or after the effective date of this paragraph.

(b) The treatment of sections 48.23 (1) (d) and (e), 48.355 (2c), 48.365 (2m) (a), 48.41 (2) (a) and (b), 48.415 (intro.), (4) (a) to (c), (6) (a) 2 and (b), 48.42 (4) (a), 48.43 (1) (intro.) and (6), 48.465, 48.81 and 48.91 (2) (a) and (b) of the statutes applies to dispositional orders, extension of dispositional orders and adoption and termination of parental rights petitions filed or judgments granted on or after the effective date of this paragraph.
