



## 2001 SENATE BILL 161

April 26, 2001 - Introduced by Senators HUELSMAN, A. LASEE, DARLING and ROESSLER, cosponsored by Representatives HUEBSCH, ZIEGELBAUER, OWENS, GUNDERSON, STARZYK and HAHN. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1     **AN ACT to amend** 48.356 (2), 48.424 (1) and 938.356 (2); and **to create** 48.422  
2           (2m) of the statutes; **relating to:** permitting the juvenile court to grant  
3           summary judgment in a termination of parental rights proceeding and  
4           prohibiting the juvenile court from granting a termination of parental rights  
5           based on an order placing a child in need of protection or services outside the  
6           home or denying parental visitation with such a child that does not warn the  
7           parent of any applicable termination of parental rights grounds and of the  
8           conditions necessary for the child to be returned to the home or for the parent  
9           to be granted visitation.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, the rules of civil procedure govern practice and procedure in all civil actions and proceedings in the circuit courts of this state, including the court assigned to exercise jurisdiction under the Children's Code (juvenile court), except when different procedures are prescribed by statute or rule. The rules of civil procedure include a procedure under which a court may grant summary judgment and thereby avoid the necessity of a trial when there is no genuine issue as to any material fact and one of the parties is entitled to judgment as a matter of law. The

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Court of Appeals recently held, however, in *In Interest of Philip W.*, 189 Wis. 2d 432 (Ct. App. 1994), that the juvenile court may not grant summary judgment in a contested termination of parental rights (TPR) proceeding because the very fact that the parent has contested the proceeding automatically raises the issue of material fact of whether the parent is a fit parent. As such, a fact-finding hearing and, if requested, a jury trial is required in all contested TPR proceedings. This bill permits the juvenile court, without a fact-finding hearing or a jury trial, to grant summary judgment, find the parent unfit, and proceed to a dispositional hearing if the juvenile court finds that there is no genuine issue of material fact as to the grounds for TPR and that the party moving for the summary judgment is entitled to judgment as a matter of law.

Under current law, when the juvenile court orders a child in need of protection or services to be placed outside the child's home or denies a parent visitation with the child in a dispositional order, a change in placement order, or an order revising or extending a dispositional order, the juvenile court must notify the parents, both orally and in writing, of any grounds for TPR that may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. Currently, the juvenile court may not grant a TPR on certain grounds, including the grounds of abandonment, continuing need of protection or services, and continuing denial of visitation, if the parent has not received that notice in writing. The supreme court recently held, in *Waukesha County v. Steven H.*, 233 Wis. 2d 344 (2000), that in a case in which the child has been the subject of more than one order placing the child outside the home or denying parental visitation, only the last order, and not every order, must contain that notice. The court of appeals, however, recently held, in *Waushara County v. Lisa K.*, 237 Wis. 2d 830 (Ct. App. 2000), that the parent in that case had received adequate notice when the last order did not contain that notice, but a previous order had. This bill prohibits the juvenile court from granting a TPR based on an order placing a child outside the home or denying parental visitation if the order does not provide that notice. The bill specifies, however, that this prohibition does not preclude the juvenile court from granting a TPR based on any previous or subsequent order with respect to the same child that provides that notice.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 48.356 (2) of the statutes is amended to read:
- 2           48.356 (2) In addition to the notice required under sub. (1), any written order
- 3           which that places a child or an expectant mother outside the home or denies
- 4           visitation under sub. (1) shall notify the parent or parents or expectant mother of the

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1 information specified under sub. (1). If a written order that places a child or an  
2 expectant mother outside the home or denies visitation under sub. (1) fails to provide  
3 notice under this subsection of the information specified in sub. (1), the court may  
4 not grant an involuntary termination of parental rights under s. 48.415 based on that  
5 order. This prohibition does not preclude the court from granting an involuntary  
6 termination of parental rights under s. 48.415 based on any previous or subsequent  
7 order with respect to the same child that provides that notice.

8 **SECTION 2.** 48.422 (2m) of the statutes is created to read:

9 48.422 (2m) If the petition is contested, a party may move for summary  
10 judgment on any ground for involuntary termination of parental rights that is  
11 asserted by or against the party. The motion shall be served at least 20 days before  
12 the time fixed for the fact-finding hearing, and the adverse party shall serve  
13 opposing affidavits, if any, at least 5 days before the time fixed for the fact-finding  
14 hearing. Section 802.08 (3) to (7) shall govern the procedure when a party moves for  
15 summary judgment under this subsection. If the pleadings, depositions, answers to  
16 interrogatories, and admissions on file, together with the affidavits, if any, show that  
17 there is no genuine issue of material fact as to the grounds for involuntary  
18 termination of parental rights and that the moving party is entitled to a judgment  
19 as a matter of law, the court shall grant the judgment sought, find the parent unfit,  
20 and either proceed immediately to hear evidence and motions related to the  
21 dispositions enumerated in s. 48.427 or set a date for a dispositional hearing as  
22 provided in s. 48.424 (4). A finding of unfitness shall not preclude a dismissal of a  
23 petition under s. 48.427 (2). Notwithstanding subs. (2) and (4) and s. 48.31 (2), if the  
24 court grants summary judgment under this subsection, the court is not required to

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1 hold the fact-finding hearing set under sub. (2) or any jury trial granted under sub.  
2 (4).

3 **SECTION 3.** 48.424 (1) of the statutes is amended to read:

4 48.424 (1) The purpose of the fact-finding hearing is to determine whether  
5 grounds exist for the termination of parental rights in those cases ~~where~~ in which the  
6 termination was contested at the hearing on the petition under s. 48.422 and in  
7 which there is a genuine issue of material fact as to whether grounds exist for  
8 termination of parental rights.

9 **SECTION 4.** 938.356 (2) of the statutes is amended to read:

10 938.356 (2) In addition to the notice required under sub. (1), any written order  
11 ~~which~~ that places a juvenile outside the home or denies visitation under sub. (1) shall  
12 notify the parent or parents of the information specified under sub. (1). If a written  
13 order that places a juvenile outside the home or denies visitation under sub. (1) fails  
14 to provide notice under this subsection of the information specified in sub. (1), the  
15 court may not grant an involuntary termination of parental rights under s. 48.415  
16 based on that order. This prohibition does not preclude the court from granting an  
17 involuntary termination of parental rights under s. 48.415 based on any previous or  
18 subsequent order with respect to the same juvenile that provides that notice.

19 **SECTION 5. Initial applicability.**

20 (1) NOTICE TO PARENTS. The treatment of sections 48.356 (2) and 938.356 (2) of  
21 the statutes first applies to termination of parental rights orders granted on the  
22 effective date of this subsection.

23 (2) SUMMARY JUDGMENTS IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The  
24 treatment of sections 48.422 (2m) and 48.424 (1) of the statutes first applies to

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1 motions for summary judgment under section 48.422 (2m) of the statutes, as created  
2 by this act, filed on the effective date of this subsection.

3 (END)