

2003 DRAFTING REQUEST

Bill

Received: **10/30/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Eric Genrich**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Termination of parental rights proceedings; elimination of jury trials in

Instructions:

See Attached--eliminate jury trials in TPR proceedings.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/30/2003	kgilfoy 11/24/2003		_____			S&L
/1			rschluet 11/25/2003	_____	sbasford 11/25/2003	sbasford 12/17/2003 sbasford 12/17/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 10/30/2003

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Eric Genrich

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Children - TPR and adoption

Extra Copies:

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Termination of parental rights proceedings; elimination of jury trials in

Instructions:

See Attached--eliminate jury trials in TPR proceedings.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/30/2003	kgilfoy 11/24/2003		_____			S&L
/1			rschluet 11/25/2003	_____	sbasford 11/25/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 10/30/2003

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Eric Genrich

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Children - TPR and adoption

Extra Copies:

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Termination of parental rights proceedings; elimination of jury trials in

Instructions:

See Attached--eliminate jury trials in TPR proceedings.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	gmalaise	1-11/04 KMG					

11
23
3

FE Sent For:

<END>

Malaise, Gordon

From: Genrich, Eric
Sent: Thursday, October 30, 2003 9:59 AM
To: Malaise, Gordon
Subject: Change in TPR Trials

Hi Gordon,

A constituent of Sen. Hansen's would like a bill drafted to provide that termination of parental rights cases are tried by judge, not jury. Thanks.

-Eric

Office of Sen. Hansen

48.31 (2)
(4)

48.415 (intro.)

48.422 (1)

(4) RP

(5)

48.424 (2) (a)

(c) CR

(3)

(4)

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 TPR 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)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3604/7

GMM... King

12/2

Tues.

1 AN ACT ^{Sen. Cat.}; relating to: the elimination of jury trials in termination of parental
2 rights 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 TPR order may demand a jury trial to determine if there are any grounds for the TPR. This bill eliminates the right to a jury trial in a TPR proceeding.

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:

3 SECTION 1. 48.31 (2) of the statutes is amended to read:
4 48.31 (2) The A hearing on a termination of parental rights petition shall be
5 to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court
6 unless the child, the child's parent, guardian, or legal custodian, the unborn child by
7 the unborn child's guardian ad litem, or the expectant mother of the unborn child
8 exercises the right to a jury trial by demanding a jury trial at any time before or

1 during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13
2 or 48.133, the jury shall consist of 6 persons. ~~If a jury trial is demanded in a~~
3 ~~proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties~~
4 ~~agree to a lesser number.~~ Chapters 756 and 805 shall govern the selection of jurors.
5 If the hearing involves a child victim or witness, as defined in s. 950.02, the court may
6 order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to
7 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
8 of ~~the a hearing on a termination of parental rights petition~~, the court shall make a
9 determination of the facts. At the conclusion of a hearing on a petition under s. 48.13
10 or 48.133, the court or jury shall make a determination of the facts, except that in a
11 case alleging a child or an unborn child to be in need of protection or services under
12 s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or
13 48.133 relating to whether the child or unborn child is in need of protection or
14 services that can be ordered by the court. If the court finds that the child or unborn
15 child is not within the jurisdiction of the court or, in a case alleging a child or an
16 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the
17 child or unborn child is not in need of protection or services that can be ordered by
18 the court or if the court or jury finds that the facts alleged in the petition have not
19 been proved, the court shall dismiss the petition with prejudice.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105.

20 **SECTION 2.** 48.31 (4) of the statutes is amended to read:

21 48.31 (4) The court shall make findings of fact and conclusions of law relating
22 to the allegations of a petition filed under s. 48.42. The court or jury shall make
23 findings of fact and the court shall make conclusions of law relating to the allegations
24 of a petition filed under s. 48.13, or 48.133 ~~or 48.42~~, except that the court shall make

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

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105.

19 **SECTION 3. 48.415 (intro.) of the statutes is amended to read:**

20 **48.415 Grounds for involuntary termination of parental rights. (intro.)**

21 At the fact-finding hearing the court ~~or jury~~ may make a finding that grounds exist
22 for the termination of parental rights. Grounds for termination of parental rights
23 shall be one of the following:

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109.

1 **SECTION 4.** 48.422 (1) of the statutes is amended to read:

2 48.422 (1) The hearing on the petition to terminate parental rights shall be
3 held within 30 days after the petition is filed. At the hearing on the petition to
4 terminate parental rights the court shall determine whether any party wishes to
5 contest the petition and inform the parties of their rights under sub. (4) and s. 48.423.

6 **History:** 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 b. 447 ss. 10, 67; 1985 a. 176; 1997 a. 104.

6 **SECTION 5.** 48.422 (4) of the statutes is repealed.

7 **SECTION 6.** 48.422 (5) of the statutes is amended to read:

8 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
9 continuance of the hearing for the purpose of consulting with an attorney ~~on the~~
10 ~~request for a jury trial or~~ concerning a request for the substitution of a judge.

11 **History:** 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 447 ss. 10, 67; 1985 a. 176; 1997 a. 104.

11 **SECTION 7.** 48.424 (2) (a) of the statutes is amended to read:

12 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

13 **History:** 1979 c. 330; 1987 a. 383.

13 **SECTION 8.** 48.424 (2) (c) of the statutes is created to read:

14 48.424 (2) (c) There is no right to a jury trial.

15 **SECTION 9.** 48.424 (3) of the statutes is amended to read:

16 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
17 shall decide whether any grounds for the termination of parental rights have been
18 proven. ~~The court shall decide~~ and what disposition is in the best interest of the child.

19 **History:** 1979 c. 330; 1987 a. 383.

19 **SECTION 10.** 48.424 (4) (intro.) of the statutes is amended to read:

20 48.424 (4) (intro.) If grounds for the termination of parental rights are found
21 by the court ~~or jury~~, the court shall find the parent unfit. A finding of unfitness shall
22 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
23 immediately to hear evidence and motions related to the dispositions enumerated in

1 s. 48.427. The court may delay making the disposition and set a date for a
2 dispositional hearing no later than 45 days after the fact-finding hearing if:

3 **History:** 1979 c. 330; 1987 a. 383.

3 **SECTION 11. Initial applicability.**

4 (1) ELIMINATION OF JURY TRIALS IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS.

5 This act first applies to a termination of parental rights proceeding in which the
6 initial hearing under section 48.422 (1) of the statutes, as affected by this act, is held
7 on the effective date of this subsection.

8 (END)

Basford, Sarah

From: Wagnitz, John
Sent: Tuesday, December 16, 2003 5:19 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3604/1 Topic: Termination of parental rights proceedings; elimination of jury trials in

It has been requested by <Wagnitz, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3604/1 Topic: Termination of parental rights proceedings; elimination of jury trials in