



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs0157/2
EAW:wlj&cde

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 559**

December 6, 2019 - Offered by Representative DITTRICH.

1 **AN ACT** *to repeal* 48.422 (4); *to amend* 48.31 (2), 48.31 (4), 48.356 (2), 48.38 (5)
2 (a), 48.38 (5m) (a), 48.415 (intro.), 48.415 (4) (a), 48.422 (1), 48.422 (5), 48.424
3 (3), 48.424 (4) (intro.), 938.356 (2), 938.38 (5) (a) and 938.38 (5m) (a); and *to*
4 **create** 48.02 (5e), 48.13 (15), 48.356 (1m), 48.415 (3m), 48.415 (11) and 938.356
5 (1m) of the statutes; **relating to:** grounds for finding a child in need of
6 protection or services or for terminating parental rights, right to a jury trial in
7 a termination of parental rights proceeding, and permanency plan reviews.

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

8 **SECTION 1.** 48.02 (5e) of the statutes is created to read:
9 48.02 (5e) “Drug-affected child” means any of the following:
10 (a) A child who suffered prenatal exposure to a controlled substance or alcohol,
11 used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms

1 in the child at birth, a positive result from a toxicology test of the mother or child at
2 the time of the child's birth, or developmental delays or other symptoms during the
3 child's first year of life that have been diagnosed as a fetal alcohol spectrum disorder
4 or as caused by prenatal exposure to a controlled substance.

5 (b) A child whose basic needs, as described in s. 48.01 (1) (ag), and safety have
6 been adversely affected by a parent's or guardian's chronic and severe use of alcohol
7 or a controlled substance.

8 **SECTION 2.** 48.13 (15) of the statutes is created to read:

9 48.13 (15) (a) The child is a drug-affected child, as defined in s. 48.02 (5e) (a),
10 and the petition is filed within 18 months of the child's birth.

11 (b) The child is a drug-affected child, as defined in s. 48.02 (5e) (b).

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

13 48.31 (2) ~~The A hearing on a termination of parental rights petition shall be~~
14 ~~to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court~~
15 ~~unless the child, the child's parent, guardian, or legal custodian, the unborn child's~~
16 ~~guardian ad litem, or the expectant mother of the unborn child exercises the right~~
17 ~~to a jury trial by demanding a jury trial at any time before or during the plea hearing.~~
18 ~~If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall~~
19 ~~consist of 6 persons. ~~If a jury trial is demanded in a proceeding under s. 48.42, the~~~~
20 ~~jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters~~
21 ~~756 and 805 shall govern the selection of jurors. If the hearing involves a child victim~~
22 ~~or witness, as defined in s. 950.02, the court may order that a deposition be taken by~~
23 ~~audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to~~
24 ~~(10) and, with the district attorney, shall comply with s. 971.105. At the conclusion~~
25 ~~of the a hearing on a termination of parental rights petition, the court shall make a~~

1 determination of the facts. At the conclusion of a hearing on a petition under s. 48.13
2 or 48.133, the court or jury shall make a determination of the facts, except that in a
3 case alleging a child or an unborn child to be in need of protection or services under
4 s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or
5 48.133 relating to whether the child or unborn child is in need of protection or
6 services that can be ordered by the court. If the court finds that the child or unborn
7 child is not within the jurisdiction of the court or, in a case alleging a child or an
8 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the
9 child or unborn child is not in need of protection or services that can be ordered by
10 the court, or if the court or jury finds that the facts alleged in the petition have not
11 been proved, the court shall dismiss the petition with prejudice.

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

13 48.31 (4) The court shall make findings of fact and conclusions of law relating
14 to the allegations of a petition filed under s. 48.42. The court or jury shall make
15 findings of fact and the court shall make conclusions of law relating to the allegations
16 of a petition filed under s. 48.13, or 48.133 ~~or 48.42~~, except that the court shall make
17 findings of fact relating to whether the child or unborn child is in need of protection
18 or services ~~which~~ that can be ordered by the court. In cases alleging a child to be in
19 need of protection or services under s. 48.13 (11), the court may not find that the child
20 is suffering emotional damage unless a licensed physician specializing in psychiatry
21 or a licensed psychologist appointed by the court to examine the child has testified
22 at the hearing that in his or her opinion the condition exists, and adequate
23 opportunity for the cross-examination of the physician or psychologist has been
24 afforded. The judge may use the written reports if the right to have testimony
25 presented is voluntarily, knowingly, and intelligently waived by the guardian ad

1 litem or legal counsel for the child and the parent or guardian. In cases alleging a
2 child to be in need of protection or services under s. 48.13 (11m) or an unborn child
3 to be in need of protection or services under s. 48.133, the court may not find that the
4 child or the expectant mother of the unborn child is in need of treatment and
5 education for needs and problems related to the use or abuse of alcohol beverages,
6 controlled substances, or controlled substance analogs and its medical, personal,
7 family, or social effects unless an assessment for alcohol and other drug abuse that
8 conforms to the criteria specified under s. 48.547 (4) has been conducted by an
9 approved treatment facility.

10 **SECTION 5.** 48.356 (1m) of the statutes is created to read:

11 48.356 (1m) Whenever the court orders a child or expectant mother of an
12 unborn child to be placed outside his or her home or denies a parent visitation in an
13 order under s. 48.21 (4) or 48.32, the court shall orally inform the parent or parents
14 who appear in court or the expectant mother who appears in court of any grounds for
15 termination of parental rights under s. 48.415 that may be applicable and, if any
16 conditions are established for the parent or parents to be granted visitation with the
17 child, the court shall orally inform the parent or parents of those conditions.

18 **SECTION 6.** 48.356 (2) of the statutes is amended to read:

19 48.356 (2) In addition to the notice required under sub. (1) or (1m), any written
20 order which places a child or an expectant mother outside the home or denies
21 visitation under sub. (1) or (1m) shall notify the parent or parents or expectant
22 mother of the information specified under sub. (1) or (1m).

23 **SECTION 7.** 48.38 (5) (a) of the statutes is amended to read:

24 48.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed
25 under par. (ag) shall review the permanency plan for each child for whom a

1 permanency plan is required under sub. (2) in the manner provided in this subsection
2 not later than 6 months after the date ~~on which the child was first removed from his~~
3 ~~or her home~~ of a hearing held under sub. (5m) and every 6 months after a previous
4 review under this subsection for as long as the child is placed outside the home,
5 except that for the review ~~that is required to be conducted not later than 12 months~~
6 ~~after the child was first removed from his or her home and the reviews that are~~
7 required to be conducted every 12 months after ~~that review~~ the initial hearing under
8 sub. (5m), the court shall hold a hearing under sub. (5m) to review the permanency
9 plan, ~~which.~~ The hearing may be instead of or in addition to the review under this
10 subsection. The 6-month and 12-month periods referred to in this paragraph
11 include trial reunifications under s. 48.358.

12 **SECTION 8.** 48.38 (5m) (a) of the statutes is amended to read:

13 48.38 **(5m)** (a) The court shall hold a hearing to review the permanency plan
14 and to make the determinations specified in sub. (5) (c) for each child for whom a
15 permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
16 on which the child was first removed from the home and every 12 months after a
17 previous hearing under this subsection for as long as the child is placed outside the
18 home. The 6-month and 12-month periods referred to in this paragraph include
19 trial reunifications under s. 48.358.

20 **SECTION 9.** 48.415 (intro.) of the statutes is amended to read:

21 **48.415 Grounds for involuntary termination of parental rights.** (intro.)
22 At the fact-finding hearing the court ~~or jury~~ shall determine whether grounds exist
23 for the termination of parental rights. If the child is an Indian child, the court ~~or jury~~
24 shall also determine at the fact-finding hearing whether continued custody of the
25 Indian child by the Indian child's parent or Indian custodian is likely to result in

1 serious emotional or physical damage to the Indian child under s. 48.028 (4) (e) 1. and
2 whether active efforts under s. 48.028 (4) (e) 2. have been made to prevent the
3 breakup of the Indian child's family and whether those efforts have proved
4 unsuccessful, unless partial summary judgment on the grounds for termination of
5 parental rights is granted, in which case the court shall make those determinations
6 at the dispositional hearing. Grounds for termination of parental rights shall be one
7 of the following:

8 **SECTION 10.** 48.415 (3m) of the statutes is created to read:

9 48.415 (3m) PARENTAL INCARCERATION. Parental incarceration, which shall be
10 established by proving all of the following:

11 (a) That the child has been adjudged to be in need of protection or services and,
12 while the parent is incarcerated, has been placed, or continued in a placement,
13 outside his or her home pursuant to one or more court orders under s. 48.345, 48.357,
14 48.363, or 48.365 containing the notice required under s. 48.356 (2).

15 (b) That the parent is incarcerated at the time of the fact-finding hearing under
16 s. 48.424.

17 (c) That the parent is likely to continue to be incarcerated for a substantial
18 period of the child's minority. In determining whether the parent is likely to continue
19 to be incarcerated for a substantial period of the child's minority, the court may
20 consider whether the parent has a history of repeated incarceration.

21 **SECTION 11.** 48.415 (4) (a) of the statutes is amended to read:

22 48.415 (4) (a) That the parent has been denied periods of physical placement
23 by court order in an action affecting the family or has been denied visitation under
24 an order under s. 48.21 (4), 48.32, 48.345, 48.355 (3), 48.363, 48.365, 48.38, 938.21

1 (4), 938.32, 938.345, 938.355 (3), 938.363 or, 938.365, or 938.38 containing the notice
2 required by s. 48.356 (2) or 938.356 (2).

3 **SECTION 12.** 48.415 (11) of the statutes is created to read:

4 48.415 (11) DRUG-AFFECTED CHILD. The child is a drug-affected child, which
5 shall be established by proving all of the following:

6 (a) That the child has been adjudged to be a child in need of protection or
7 services under s. 48.13 (15) (b) and placed outside the home pursuant to one or more
8 court orders under s. 48.345, 48.347, 48.357, 48.363, or 48.365.

9 (b) That one of the following applies:

10 1. The parent has not made reasonable efforts to enroll in a substance use
11 disorder treatment or recovery program within 90 days of the placement of the child
12 outside the home pursuant to one or more court orders under s. 48.345, 48.347,
13 48.357, 48.363, or 48.365.

14 2. The parent enrolled in a substance use disorder treatment or recovery
15 program after placement of the child outside the home pursuant to one or more court
16 orders under s. 48.345, 48.347, 48.357, 48.363, or 48.365 but has not maintained
17 substantial compliance with the program.

18 (c) That the parent is not participating in a drug court program as described
19 in s. 165.955 (1).

20 (d) That there is a substantial likelihood that the parent will not meet the
21 conditions for the safe return of the child to the home by the anticipated date that
22 the child's permanency goal will be achieved, as specified in the child's permanency
23 plan under s. 48.38.

24 **SECTION 13.** 48.422 (1) of the statutes is amended to read:

1 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
2 to terminate parental rights shall be held within 30 days after the petition is filed.
3 At the hearing on the petition to terminate parental rights the court shall determine
4 whether any party wishes to contest the petition and inform the parties of their
5 rights under ~~sub. (4) and~~ s. 48.423.

6 **SECTION 14.** 48.422 (4) of the statutes is repealed.

7 **SECTION 15.** 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 **SECTION 16.** 48.424 (3) of the statutes is amended to read:

12 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
13 shall decide whether any grounds for the termination of parental rights have been
14 proved ~~and,~~ whether the allegations specified in s. 48.42 (1) (e) have been proved in
15 cases involving the involuntary termination of parental rights to an Indian child.
16 ~~The court shall decide, and~~ what disposition is in the best interest of the child.

17 **SECTION 17.** 48.424 (4) (intro.) of the statutes is amended to read:

18 48.424 (4) (intro.) If the court finds grounds for the termination of parental
19 rights ~~are found by the court or jury,~~ the court shall find the parent unfit. A finding
20 of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). Except
21 as provided in s. 48.23 (2) (b) 3., the court shall then proceed immediately to hear
22 evidence and motions related to the dispositions enumerated in s. 48.427. Except as
23 provided in s. 48.42 (2g) (ag), the court may delay making the disposition and set a
24 date for a dispositional hearing no later than 45 days after the fact-finding hearing
25 if any of the following apply:

1 **SECTION 18.** 938.356 (1m) of the statutes is created to read:

2 938.356 **(1m)** Whenever the court orders a juvenile to be placed outside his or
3 her home or denies a parent visitation in an order under s. 938.21 (4) or 938.32, the
4 court shall orally inform the parent or parents who appear in court of any grounds
5 for termination of parental rights under s. 48.415 that may be applicable.

6 **SECTION 19.** 938.356 (2) of the statutes is amended to read:

7 938.356 **(2)** WRITTEN WARNING. In addition to the notice required under sub. (1)
8 or (1m), any written order which places a juvenile outside the home or denies
9 visitation under sub. (1) or (1m) shall notify the parent or parents of the information
10 specified under sub. (1) or (1m).

11 **SECTION 20.** 938.38 (5) (a) of the statutes is amended to read:

12 938.38 **(5)** (a) Except as provided in s. 48.63 (5) (d), the court or a panel
13 appointed under par. (ag) shall review the permanency plan for each juvenile for
14 whom a permanency plan is required under sub. (2) in the manner provided in this
15 subsection not later than 6 months after the date ~~on which the juvenile was first~~
16 ~~removed from his or her home~~ of a hearing held under sub. (5m) and every 6 months
17 after a previous review under this subsection for as long as the juvenile is placed
18 outside the home, except that for the review ~~that is required to be conducted not later~~
19 ~~than 12 months after the juvenile was first removed from his or her home and the~~
20 reviews that are required to be conducted every 12 months after ~~that review the~~
21 initial hearing under sub. (5m), the court shall hold a hearing under sub. (5m) to
22 review the permanency plan. The hearing may be instead of or in addition to the
23 review under this subsection. The 6-month and 12-month periods referred to in this
24 paragraph include trial reunifications under s. 938.358.

25 **SECTION 21.** 938.38 (5m) (a) of the statutes is amended to read:

1 938.38 (5m) (a) The court shall hold a hearing to review the permanency plan
2 and to make the determinations specified in sub. (5) (c) for each juvenile for whom
3 a permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
4 on which the juvenile was first removed from the home and every 12 months after
5 a previous hearing under this subsection for as long as the juvenile is placed outside
6 the home. The 6-month and 12-month periods referred to in this paragraph include
7 trial reunifications under s. 938.358.

8 **SECTION 22. Nonstatutory provisions.**

9 (1) PARENTAL INCARCERATION. A court assigned to exercise jurisdiction under ch.
10 48 may terminate parental rights to a child who was ordered to be placed outside the
11 home before the effective date of this subsection on the grounds specified under s.
12 48.415 (3m) notwithstanding that the parent was not notified of those grounds under
13 s. 48.356 (2) or 938.356 (2) when that placement was ordered so long as the parent
14 is notified of those grounds under s. 48.356 (2) or 938.356 (2) before the filing of the
15 termination of parental rights petition.

16 **SECTION 23. Initial applicability.**

17 (1) RIGHT TO A JURY TRIAL. The treatment of ss. 48.31 (2) and (4), 48.415 (intro.),
18 48.422 (1), (4), and (5), and 48.424 (3) and (4) (intro.) first applies to a termination
19 of parental rights proceeding for which the petition is filed on the effective date of this
20 subsection.

21 (2) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of s. 48.13
22 (15) first applies to a petition filed under s. 48.13 on the effective date of this
23 subsection.

24 (3) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.
25 The treatment of s. 48.415 (11) first applies to a court order required to contain the

1 notice under s. 48.356 (2) or 938.356 (2) granted on the effective date of this
2 subsection.

3 (4) PERMANENCY PLAN REVIEWS. The treatment of ss. 48.38 (5) (a) and (5m) (a)
4 and 938.38 (5) (a) and (5m) (a) first applies to a permanency plan that is filed with
5 the court under s. 48.38 (3) or 938.38 (3) on the effective date of this subsection.

6 (5) PARENTAL INCARCERATION. The treatment of s. 48.415 (3m) and SECTION 22
7 (1) of this act first apply to a petition for termination of parental rights filed on the
8 effective date of this subsection.

9 (END)