

1969 Assembly Bill 188

Date published:
January 6, 1970

CHAPTER 293, LAWS OF 1969

AN ACT to amend 48.40 (intro.), (2) (b), (c) and (d) and 48.42; and to repeal and recreate 48.40 (2) (e) and (3) of the statutes, relating to termination of parental rights.

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

SECTION 1. 48.40 (intro.) and (2) (b), (c) and (d) of the statutes are amended to read:

48.40 (intro.) The court may, upon petition, terminate all rights of

parents to a minor in ~~either~~ *any* of the following cases:

(2) (b) That the parents have substantially ~~and~~ or continuously or repeatedly refused or *neglected or are unable for a prolonged indeterminate period* to give the minor ~~necessary~~ *the* parental care and protection necessary for his health, morals or well-being; or

(c) That, although the parents are financially able, they have substantially and continuously neglected to provide the minor with necessary subsistence, education or other care necessary for his health, ~~morals,~~ or well-being or have neglected to pay for such subsistence, education or other care when legal custody is lodged with others; or

(d) That the parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd ~~and~~ or lascivious behavior or conviction and confinement for a felony (including hospitalization within the sex deviate statutes), which conduct or status is found by the court to be likely to be detrimental to the health, morals or the best interests of the minor; or

SECTION 2. 48.40 (2) (e) and (3) of the statutes are repealed and re-created to read:

48.40 (2) (e) That the parents, subsequent to a finding of neglect, have failed to correct the conditions leading to such a finding despite reasonable efforts under the direction of the court to rectify the conditions upon which such finding was based; or

(3) If the parents have been found mentally deficient or mentally ill by a court of competent jurisdiction in a proceeding other than the instant termination of a parental rights proceeding and the juvenile court finds:

(a) That because of such mental deficiency or mental illness the parents are and will continue to be incapable of giving the minor proper parental care and protection for a prolonged indeterminate period, or when one parent is found mentally deficient or mentally ill and the other parent has substantially or continuously or repeatedly refused or neglected to give the minor the parental care and protection necessary for his health, morals or well-being; or

(b) That grounds for termination under sub. (2) existed prior to the time of the finding of mental illness.

SECTION 3. 48.42 of the statutes is amended to read:

48.42 (1) The termination of parental rights under s. 48.40 shall be made only after a hearing before the court. The court shall have notice of the time, place and purpose of the hearing served on the parents personally at least 10 days prior to the date of the hearing; or if the court is satisfied that personal service, either within or outside the state, cannot be effected, then such notice may be given by registered mail sent at least 20 days before the date of the hearing to the last known address of the parent, if an address is known, and by publication thereof as a class 3 notice, under ch. 985. A parent who consents to the termination of his parental rights under s. 48.40 (1) may waive in writing the notice required by this section; if the parent is a minor or *incompetent* his waiver shall be effective only if his guardian ad litem concurs in writing.

(2) In the case of any minor or incompetent parent the court shall appoint a guardian ad litem. No parental rights may be terminated on consent under s. 48.40 (1) unless the guardian ad litem, in writing, joins in the written consent of the parent to the termination of his parental rights. *When the parent and the guardian ad litem consent in writing to the termination of parental rights, minority or incompetence shall not be grounds for later attack on an order terminating parental rights which order is*

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*based on such consent and the court's finding that the consent was freely
and intelligently given.*

Approved December 10, 1969.
