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12/14/2012

1 **AN ACT** *to amend* 48.27 (3) (b) 2., 48.415 (3) (a), 48.415 (5) (a), 48.415 (8), 48.415
2 (9), 48.415 (9m) (a) and 48.42 (2m) (a); and *to create* 48.415 (9) (c) of the statutes;
3 **relating to:** revising certain grounds for an involuntary termination of parental
4 rights, and revising evidentiary requirements for certain grounds for an involuntary
5 termination of parental rights and for certain notice exceptions.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Permanency for Young Children in the Child Welfare System.

Continuing Parental Disability

Background

Under current law, a parent's continuing disability is a ground for involuntary termination of a person's parental rights (TPR). This ground requires all of the following findings: (1) the parent is currently receiving inpatient treatment in a hospital or treatment facility for mental illness, developmental disability, or other like incapacity; (2) the parent has received inpatient treatment in one or more hospitals or treatment facilities for a cumulative total period of at least 2 of the last 5 years immediately prior to the filing of the TPR petition; (3) the parent's condition is likely to continue indefinitely; and (4) the child is not being provided with adequate care by a relative, parent, or guardian.

Bill Draft

The draft revises the TPR ground of a continuing parental disability to require a parent to have had inpatient treatment history for at least 15 of the last 22 months prior to the filing of the TPR petition, rather than an inpatient history for at least 2 of the last 5 years.

Parenthood as a Result of Sexual Assault

Background

Under current law, a parent's commission of sexual assault that results in conception of a child is a ground for TPR. Conception as a result of

sexual assault may be proven by a final judgment of conviction or other evidence produced at a fact-finding hearing showing that the person who may be the father committed sexual assault against the mother during a possible time of conception. The mother of the child must be afforded an opportunity to be heard on her desire for the termination of the father's parental rights.

In addition, a court is not required to provide notice of a child in need of protection or services (CHIPS) or TPR action to a person who may be the father of a child conceived as a result of a sexual assault, if a physician attests to a belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

Bill Draft

The draft revises the TPR ground of conception as a result of sexual assault to equally apply to termination of a mother's or father's parental rights. The draft also specifies that the ground is inapplicable to a perpetrator of a non-violent sexual assault of a minor, if the perpetrator was also a minor at the time of the assault and was within 4 years of age difference from the victim.

Additionally, in the exceptions from providing notice of a CHIPS or TPR action to a person who may be the father, the draft removes the requirement for a physician's statement as to a belief that there was a sexual assault, and instead requires proof by a final judgment of conviction or other evidence. Under the draft, the exception to providing notice of a CHIPS action does not apply to a father who was under age 18 at the time of the sexual assault, in the same manner as the exception to providing notice of a TPR action under current law.

Pattern of Child Abuse; Homicide of Parent; and Felony Against a Child

Background

Under current law, a parent's commission of one of certain egregious crimes is a ground for TPR. These include: (1) a parent who has subjected a child to a pattern of physically or sexually abusive behavior that is a substantial threat to the health of the child; (2) a parent who has committed homicide or solicitation to commit homicide of the other parent; or (3) a parent who has committed a serious felony against the person's own child or committed child trafficking against any child.

Each of these circumstances requires evidence of a final judgment of conviction for the crime. In order for a judgment of conviction to be considered as final under the law, the time for appeal must have expired,

or, if appealed, all appeals directly challenging the parent's guilt must be exhausted.

Bill Draft

The draft revises the TPR grounds of child abuse, homicide of a parent, and felony against a child to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

1 **SECTION 1.** 48.27 (3) (b) 2. of the statutes is amended to read:

2 48.27 (3) (b) 2. A court is not required to provide notice, under subd. 1., to any person
3 who may be the father of a child ~~conceived as a result of a sexual assault if a physician attests~~
4 ~~to his or her belief that there was a~~ if sexual assault of the child's mother that may have resulted
5 in the child's conception is proved by a final judgment of conviction or other evidence. A
6 person who is not given notice under this subdivision does not have standing to appear and
7 contest a petition under s. 48.13 or 48.133, present evidence relevant to the issue of
8 disposition, or make alternative dispositional recommendations. This subdivision does not
9 apply to a person who may be the father of a child conceived as a result of a sexual assault in
10 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual
11 assault.

NOTE: This SECTION removes the requirement for a physician's statement as to a belief that there was a sexual assault, in the exception from providing notice of a CHIPS action to a person who may be the father, and instead requires proof by a final judgment of conviction or other evidence. Additionally, the exception to providing notice of a CHIPS action does not apply to a father who was under age 18 at the time of the sexual assault, in the same manner as the exception to providing notice of a TPR action under current law.

12 **SECTION 2.** 48.415 (3) (a) of the statutes is amended to read:

13 48.415 (3) (a) The parent is presently, and for a cumulative total period of at least ~~2~~-years
14 15 months within the ~~5~~-years 22 months immediately prior to the filing of the petition has been,
15 an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), ~~licensed~~ approved

1 treatment facilities as defined in s. 51.01 (2), or state treatment facilities as defined in s. 51.01
2 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b), developmental disability
3 as defined in s. 55.01 (2), or other like incapacities, as defined in s. 55.01 (5);

NOTE: This SECTION revises the TPR ground of a continuing parental disability to require a parent to have had inpatient treatment history for at least 15 of the last 22 months prior to the filing of the TPR petition, rather than an inpatient history for at least 2 of the last 5 years. This SECTION also corrects the terminology for an “approved treatment facility”, as used in the statutes.

4 **SECTION 3.** 48.415 (5) (a) of the statutes is amended to read:

5 48.415 (5) (a) That the parent has caused death or injury to a child or children resulting
6 in a that may be proved by a final judgment of felony conviction or other evidence produced
7 at a fact-finding hearing under s. 48.424 indicating that the person caused the death or injury.

NOTE: This SECTION revises the TPR ground of a pattern of child abuse to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

8 **SECTION 4.** 48.415 (8) of the statutes is amended to read:

9 48.415 (8) HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or
10 solicitation to commit homicide of a parent, which shall be established by proving that a parent
11 of the child has been a victim of first-degree intentional homicide in violation of s. 940.01,
12 first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide
13 in violation of s. 940.05 or a crime under federal law or the law of any other state that is
14 comparable to any of those crimes, or has been the intended victim of a solicitation to commit
15 first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the
16 law of any other state that is comparable to that crime, and that the person whose parental rights
17 are sought to be terminated has ~~been convicted of~~ committed that intentional or reckless
18 homicide, solicitation or crime under the laws of this state, federal law, or the law of any other

1 state as evidenced by a final judgment of conviction or other evidence produced at a
2 fact-finding hearing under s. 48.424 indicating that the person committed or solicited
3 homicide of a parent as described in this subsection.

NOTE: This SECTION revises the TPR ground of homicide, or a solicitation to commit homicide, of the child's other parent to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

4 SECTION 5. 48.415 (9) of the statutes is amended to read:

5 48.415 (9) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. (a) Parenthood Except as
6 provided in par. (c), parenthood as a result of sexual assault, which shall be established by
7 proving that the child was conceived as a result of a sexual assault in violation of s. 940.225
8 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085. Conception as a result of sexual assault
9 as specified in this paragraph may be proved by a final judgment of conviction or other
10 evidence produced at a fact-finding hearing under s. 48.424 indicating that the ~~person who~~
11 ~~may be the father~~ parent of the child committed, during a possible time of conception, a sexual
12 assault as specified in this paragraph against the ~~mother~~ other parent of the child.

13 (b) If the conviction or other evidence specified in par. (a) indicates that the child was
14 conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) or 948.085, the
15 ~~mother of the child~~ parent who was the victim of the sexual assault may be heard on his or her
16 desire for the termination of the ~~father's~~ other person's parental rights.

NOTE: This SECTION revises the TPR ground of conception as a result of sexual assault to equally apply to termination of a mother's or father's parental rights, rather than referring only to the father as the perpetrator. This SECTION also specifies that a court must allow either a mother or father who was a victim of sexual assault of a minor, or victim of sexual assault of a minor by an out-of-home care provider, to be heard on his or her desires regarding the TPR of the other parent, rather than allowing only a mother, as a victim, to be heard.

17 SECTION 6. 48.415 (9) (c) of the statutes is created to read:

1 48.415 (9) (c) This subsection does not apply to a parent who committed sexual assault
2 under s. 948.02 (1) (b) or (e), or (2), if that person was under 18 years of age at the time of the
3 sexual assault, was not more than 4 years older or 4 years younger than the victim, and the
4 assault did not involve the use or threat of force or violence.

NOTE: This SECTION specifies that the TPR ground of conception as a
 result of sexual assault is inapplicable to a perpetrator of a non-violent
 sexual assault of a minor, if the perpetrator was also a minor at the time
 of the assault and was within 4 years of age difference from the victim.

5 **SECTION 7.** 48.415 (9m) (a) of the statutes is amended to read:

6 48.415 (9m) (a) Commission of a serious felony against one of the person's children,
7 which shall be established by proving that a child of the person whose parental rights are
8 sought to be terminated was the victim of a serious felony and that the person whose parental
9 rights are sought to be terminated has ~~been convicted of~~ committed that serious felony as
10 evidenced by a final judgment of conviction or other evidence produced at a fact-finding
11 hearing under s. 48.424 indicating that the person committed a serious felony against one of
12 the person's children.

NOTE: This SECTION revises the TPR ground of felony against a child to
 allow evidence of the criminal conduct itself to be proven, as an
 alternative to allowing proof by a final judgment of conviction.

13 **SECTION 8.** 48.42 (2m) (a) of the statutes is amended to read:

14 48.42 (2m) (a) *Parent as a result of sexual assault.* Except as provided in this paragraph,
15 notice is not required to be given to a person who may be the father of a child conceived as
16 a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025,
17 or 948.085 ~~if a physician attests to his or her belief that a sexual assault as specified in this~~
18 ~~paragraph has occurred or if the person who may be the father of the child has been convicted~~
19 ~~of sexual assault as specified in this paragraph for conduct which may have led to the child's~~

1 ~~conception that may be proved by a final judgment of conviction or other evidence.~~ A person
2 who under this paragraph is not given notice does not have standing to appear and contest a
3 petition for the termination of his parental rights, present evidence relevant to the issue of
4 disposition, or make alternative dispositional recommendations. This paragraph does not
5 apply to a person who may be the father of a child conceived as a result of a sexual assault in
6 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual
7 assault.

NOTE: This SECTION removes the requirement for a physician's statement as to a belief that there was a sexual assault, in the exception from providing notice of a TPR action to a person who may be the father, and instead requires proof by a final judgment of conviction or other evidence.

8 **SECTION 9. Initial applicability.**

9 (1) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. The
10 treatment of section 48.415 (3) (a), (5) (a), (8), (9) (a) to (c), and (9m) (a) of the statutes first
11 applies to court orders required to contain the notice under section 48.356 (2) or 938.356 (2)
12 of the statutes granted on the effective date of this subsection.

NOTE: This SECTION specifies that each of the revised TPR grounds first apply after a parent has been informed in writing of any grounds for TPR that may be applicable, when a child or juvenile has been removed from the home under a dispositional order or its extension or revision.

13 (END)