



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBs0255/1
EAW:amn

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 628**

November 30, 2021 - Offered by Representative DITTRICH.

1 **AN ACT** *to repeal* 48.243 (1) (g); and *to amend* 48.028 (4) (d) 1., 48.028 (4) (d) 2.,
2 48.31 (2), 48.31 (4) and 48.31 (5) of the statutes; **relating to:** elimination of a
3 jury trial in a child in need of protection or services (CHIPS) proceeding.

Analysis by the Legislative Reference Bureau

Under current law, in a proceeding to determine whether a child or unborn child is in need of protection or services (CHIPS or UCHIPS), and in a termination of parental rights (TPR) proceeding, a child or the child's parent, guardian, or legal custodian; an unborn child's guardian ad litem; or an expectant mother of an unborn child has a statutory right to a jury trial in the fact-finding portion of the proceeding. This bill eliminates that statutory right in a CHIPS or UCHIPS proceeding.

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

4 **SECTION 1.** 48.028 (4) (d) 1. of the statutes is amended to read:
5 48.028 (4) (d) 1. The court ~~or jury~~ finds by clear and convincing evidence,
6 including the testimony of one or more qualified expert witnesses chosen in the order

1 of preference listed in par. (f), that continued custody of the Indian child by the parent
2 or Indian custodian is likely to result in serious emotional or physical damage to the
3 child.

4 **SECTION 2.** 48.028 (4) (d) 2. of the statutes is amended to read:

5 48.028 (4) (d) 2. The court ~~or jury~~ finds by clear and convincing evidence that
6 active efforts, as described in par. (g) 1., have been made to provide remedial services
7 and rehabilitation programs designed to prevent the breakup of the Indian child's
8 family and that those efforts have proved unsuccessful. The court ~~or jury~~ shall make
9 that finding notwithstanding that a circumstance specified in s. 48.355 (2d) (b) 1. to
10 5. applies.

11 **SECTION 3.** 48.243 (1) (g) of the statutes is repealed.

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

13 48.31 (2) ~~The A hearing on a petition under s. 48.13 or 48.133 shall be to the~~
14 ~~court. A hearing on a termination of parental rights petition 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 or jury shall

1 make a determination of the facts. At the conclusion of a hearing on a petition under
2 s. 48.13 or 48.133, the court shall make a determination of the facts, except that in
3 a 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 including a determination under s. 48.13
5 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection
6 or 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 5.** 48.31 (4) of the statutes is amended to read:

13 48.31 (4) The court or jury shall make findings of fact and the court shall make
14 conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133
15 or 48.42, ~~except that the court shall make findings of fact relating to whether the~~
16 ~~child or unborn child is in need of protection or services which can be ordered by the~~
17 ~~court. The court shall make findings of fact and conclusions of law relating to the~~
18 ~~allegations of a petition filed under s. 48.13 or 48.133.~~ In cases alleging a child to be
19 in need of protection or services under s. 48.13 (11), the court may not find that the
20 child is suffering emotional damage unless a licensed physician specializing in
21 psychiatry or a licensed psychologist appointed by the court to examine the child has
22 testified 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 6.** 48.31 (5) of the statutes is amended to read:

11 48.31 (5) If the child is an Indian child, the court ~~or jury~~ shall also determine
12 at the fact-finding hearing on a petition under s. 48.13 or 48.133 whether continued
13 custody of the Indian child by the Indian child's parent or Indian custodian is likely
14 to result in serious emotional or physical damage to the Indian child under s. 48.028
15 (4) (d) 1. and whether active efforts under s. 48.028 (4) (d) 2. have been made to
16 prevent the breakup of the Indian child's family and whether those efforts have
17 proved unsuccessful, ~~unless partial summary judgment on the allegations under s.~~
18 ~~48.13 or 48.133 is granted, in which case the court shall make those determinations~~
19 ~~at the dispositional hearing.~~

20 **SECTION 7. Initial applicability.**

21 (1) **RIGHT TO A JURY TRIAL.** This act first applies to a petition that is filed under
22 s. 48.13, 48.133, or 48.42 on the effective date of this subsection.

23 (END)