



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBs0342/1
EAW:amn

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 628**

February 10, 2022 - Offered by Representative DITTRICH.

1 **AN ACT** *to amend* 48.243 (1) (g) and 48.31 (2); and *to create* 48.422 (4m) of the
2 statutes; **relating to:** elimination of a jury trial in a child in need of protection
3 or services (CHIPS) proceeding and substitution of judge in a proceeding for the
4 termination of parental rights.

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, unless the child who is the subject of the petition is subject to the Wisconsin Indian Child Welfare Act.

The bill also changes who may request substitution of judge in a proceeding for the termination of parental rights (TPR). Under current law, the child, the child's parent, guardian or legal custodian, the expectant mother, or the unborn child's guardian ad litem may each request substitution of judge one time before the plea hearing. Under the bill, only the petitioner or the parent may request substitution of judge, and if a new judge is assigned to the proceeding, a party's request for

substitution must be submitted no later than 10 days after receipt of notice of the new assignment.

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

1 **SECTION 1.** 48.243 (1) (g) of the statutes is amended to read:

2 48.243 (1) (g) ~~The~~ If the child is an Indian child, the right to a jury trial.

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

4 48.31 (2) ~~The~~ A hearing on a petition under s. 48.13 or 48.133 concerning a child
5 other than an Indian child shall be to the court. A hearing on a petition under s. 48.13
6 or 48.133 concerning an Indian child or on a termination of parental rights petition
7 shall be to the court unless the child, the child's parent, guardian, or legal custodian,
8 the unborn child's guardian ad litem, or the expectant mother of the unborn child
9 exercises the right to a jury trial by demanding a jury trial at any time before or
10 during the plea hearing. If a jury trial is demanded ~~in a proceeding under s. 48.13~~
11 ~~or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a~~
12 ~~proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties~~
13 ~~agree to a lesser number.~~ Chapters 756 and 805 shall govern the selection of jurors.
14 If the hearing involves a child victim or witness, as defined in s. 950.02, the court may
15 order that a deposition be taken by audiovisual means and allow the use of a recorded
16 deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with
17 s. 971.105. At the conclusion of the hearing, the court or jury shall make a
18 determination of the facts, except that in a case alleging a child or an unborn child
19 to be in need of protection or services under s. 48.13 or 48.133, the court shall make
20 the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or
21 unborn child is in need of protection or services that can be ordered by the court. If

1 the court finds that the child or unborn child is not within the jurisdiction of the court
2 or, in a case alleging a child or an unborn child to be in need of protection or services
3 under s. 48.13 or 48.133, that the child or unborn child is not in need of protection
4 or services that can be ordered by the court, or if the court or jury finds that the facts
5 alleged in the petition have not been proved, the court shall dismiss the petition with
6 prejudice.

7 **SECTION 3.** 48.422 (4m) of the statutes is created to read:

8 48.422 (4m) Notwithstanding s. 48.29 (1), substitution of judge in a proceeding
9 under this subchapter may be requested only by the petitioner and the parent. No
10 party may file more than one request for substitution in any one action, nor may any
11 request for substitution name more than one judge. If a new judge is assigned to the
12 proceeding, a request for substitution must be made within 10 days of receipt of
13 notice of assignment.

14 **SECTION 4. Initial applicability.**

15 (1) This act first applies to a petition that is filed under s. 48.13, 48.133, or 48.42
16 on the effective date of this subsection.

17 (END)