



1995 SENATE BILL 246

June 1, 1995 - Introduced by Senators DARLING, MOORE, ANDREA, FARROW, PLEWA, COWLES, ROSENZWEIG, BUETTNER, A. LASEE, RUDE and WEEDEN, cosponsored by Representatives SILBAUGH, KRUSICK, FOTI, PLACHE, DUFF, DOBYNS, KREIBICH, OWENS, HUBER, AINSWORTH, SPRINGER, ZUKOWSKI, SCHNEIDERS, GOETSCH, MUSSER, ZIEGELBAUER, UNDERHEIM, JENSEN, SERATTI, RILEY and KLUSMAN. Referred to Committee on Judiciary.

1 **AN ACT to repeal** 48.422 (4); **to renumber** 48.415 (2) (a), 48.415 (2) (b) and 48.415
2 (2) (c); **to amend** 20.435 (7) (pd), 48.02 (6), 48.02 (17q), 48.21 (1) (a), 48.31 (2),
3 48.415 (intro.), 48.415 (2) (intro.), 48.422 (1), 48.422 (5), 48.424 (2) (a), 48.424
4 (3), 48.424 (4) (intro.), 48.62 (1), 48.625 (1), 48.625 (3) and 50.01 (1) (a) 1.; and
5 **to create** 48.21 (1) (am), 48.415 (2) (am), 48.424 (2) (c), 48.62 (1) (c), 48.62 (5)
6 and 48.645 of the statutes; **relating to:** jury trials in termination of parental
7 rights proceedings, repeat out-of-home placements as a grounds for
8 termination of parental rights, the number of individuals for whom a foster
9 home, treatment foster home or adult family care home may be licensed to
10 provide care and maintenance, the time within which a hearing must be held
11 for certain children who are taken into custody under the children's code, a
12 foster care and treatment foster care hotline and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, any party to a termination of parental rights (TPR) proceeding whose rights may be affected by the TPR order may demand a jury trial to determine if there are any grounds for TPR. This bill eliminates the right to a jury trial in TPR proceedings.

Current law provides that continuing need of protection or services is a ground for involuntary TPR. Currently, continuing need of protection or services may be

established by a showing that: 1) the child has been found to be in need of protection or services and placed, or continued in a placement, outside the child's home by the court assigned to exercise jurisdiction under the children's code (juvenile court); 2) the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the juvenile court; and 3) the child has been outside the home for a cumulative total period of one year or longer or, if the child has not attained the age of 3 years, for a cumulative total period of 6 months or longer, the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet those conditions within the next 12 months.

This bill creates an alternative method of establishing continuing need of protection or services. Specifically, the bill provides that continuing need of protection or services may be established by a showing that the child has been found to be in need of protection or services and *on 3 or more separate occasions* has been placed, or continued in a placement, outside the child's home by the juvenile court. If that showing is made, the further showings required under current law to establish continuing need of protection or services, that is, that the agency has made a diligent effort and that the parent has made substantial progress, need not be made.

Under current law, a foster home and an adult family home may provide care for no more than 4 individuals, unless all of the individuals are siblings. Currently, a treatment foster home may provide care for no more than 4 individuals. This bill permits the department of health and social services (DHSS), a county department of human services or social services or a licensed child welfare agency (licensing agency) to license a foster home, treatment foster home or adult family home to provide care for more than 4 individuals who are not siblings if the licensing agency determines that it would not be contrary to the welfare of those individuals.

Under current law, if a child is taken into custody under the children's code and not released, a hearing to determine whether the child should continue to be held in custody (custody hearing) must be conducted within 24 hours after the time that the decision to hold the child was made, exclusive of Saturdays, Sundays and legal holidays. This bill permits a custody hearing to be held within 72 hours after the time that the decision to hold the child was made, exclusive of Saturdays, Sundays and legal holidays, for a child who was taken into custody under either of the following:

1. An order of the juvenile court if made on a showing that the welfare of the child demands that the child be immediately removed from his or her present custody.

2. Circumstances in which a law enforcement officer believes on reasonable grounds that the child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.

Finally, the bill requires DHSS to allocate \$46,000 in federal foster care and adoption assistance (generally referred to as "IV-E") funds in each fiscal year to provide a foster care and treatment foster care hotline that foster parents, treatment foster parents, foster children, treatment foster children, parents with children in

foster care or treatment foster care, guardians ad litem, child protection caseworkers and others may call to obtain information about foster care and treatment foster care. The bill also authorizes 1.0 full-time equivalent (FTE) position for DHSS to staff that hotline.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.435 (7) (pd) of the statutes is amended to read:

2 20.435 (7) (pd) *Federal aid; state foster care and adoption services.* All federal
3 moneys received for meeting the costs of providing foster care, treatment foster care
4 and institutional child care under ss. 48.48 (4) and (14) and 48.52, and for the cost
5 of care for children under s. 49.19 (10) (d). Disbursements for foster care under s.
6 46.03 (20) and for the purposes described under s. ss. 48.627 and 48.645 may be made
7 from this appropriation.

8 **SECTION 2.** 48.02 (6) of the statutes is amended to read:

9 48.02 (6) “Foster home” means any facility that is operated by a person
10 required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for
11 no more than 4 children unless all of the children are siblings or the department,
12 county department or licensed child welfare agency issuing the license determines
13 that providing care and maintenance for more than 4 children would not be contrary
14 to the welfare of those children.

15 **SECTION 3.** 48.02 (17q) of the statutes is amended to read:

16 48.02 (17q) “Treatment foster home” means any facility that is operated by a
17 person required to be licensed under s. 48.62 (1) (b), that is operated under the
18 supervision of the department, a county department or a licensed child welfare
19 agency, and that provides ~~to no more than 4 children~~ care, maintenance and

1 structured, professional treatment by trained individuals, including the treatment
2 foster parents, to no more than 4 children unless all of the children are siblings or
3 the department, county department or licensed child welfare agency issuing the
4 license determines that providing those services for more than 4 children would not
5 be contrary to the welfare of those children.

6 **SECTION 4.** 48.21 (1) (a) of the statutes is amended to read:

7 48.21 (1) (a) If a child who has been taken into custody is not released under
8 s. 48.20, a hearing to determine whether the child shall continue to be held in custody
9 under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or juvenile
10 court commissioner within ~~24 hours of the time the decision to hold the child was~~
11 ~~made, excluding Saturdays, Sundays and legal holidays~~ the time period specified in
12 par. (am). By the time of the hearing a petition under s. 48.25 shall be filed, except
13 that no petition need be filed where a child is taken into custody under s. 48.19 (1)
14 (b) or (d) 2., 6. or 7. or where the child is a runaway from another state, in which case
15 a written statement of the reasons for holding a child in custody shall be substituted
16 if the petition is not filed. If no hearing has been held within ~~24 hours~~ the time period
17 specified in par. (am) or if no petition or statement has been filed at the time of the
18 hearing, the child shall be released except as provided in par. (b). A parent not
19 present at the hearing shall be granted a rehearing upon request.

20 **SECTION 5.** 48.21 (1) (am) of the statutes is created to read:

21 48.21 (1) (am) The judge or juvenile court commissioner shall conduct the
22 hearing under par. (a) within 24 hours after the time that the decision to hold the
23 child in custody was made, excluding Saturdays, Sundays and legal holidays, except
24 that if the child was taken into custody under s. 48.19 (1) (c) or (d) 5. the judge or
25 juvenile court commissioner shall conduct the hearing under par. (a) within 72 hours

1 after the time that the decision to hold the child in custody was made, excluding
2 Saturdays, Sundays and legal holidays.

3 **SECTION 6.** 48.31 (2) of the statutes is amended to read:

4 48.31 (2) The A hearing on a termination of parental rights petition shall be
5 to the court. A hearing on a petition under s. 48.12, 48.125 or 48.13 or a citation under
6 s. 48.125 shall be to the court unless the child, parent, guardian or legal custodian
7 exercises the right to a jury trial by demanding a jury trial at any time before or
8 during the plea hearing. Chapters 756 and 805 shall govern the selection of jurors
9 except that ss. 972.03 and 972.04 shall apply in cases in which the juvenile is alleged
10 to be delinquent under s. 48.12. If the hearing involves a child victim or witness, as
11 defined in s. 950.02, the court may order the taking and allow the use of a videotaped
12 deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with
13 s. 971.105. At the conclusion of the hearing, the court or jury shall make a
14 determination of the facts. If the court finds that the child is not within the
15 jurisdiction of the court or the court or jury finds that the facts alleged in the petition
16 or citation have not been proved, the court shall dismiss the petition or citation with
17 prejudice.

18 **SECTION 7.** 48.415 (intro.) of the statutes is amended to read:

19 **48.415 Grounds for involuntary termination of parental rights.**
20 (intro.) At the fact-finding hearing the court ~~or jury~~ may make a finding that
21 grounds exist for the termination of parental rights. Grounds for termination of
22 parental rights shall be one of the following:

23 **SECTION 8.** 48.415 (2) (intro.) of the statutes is amended to read:

1 48.415 (2) CONTINUING NEED OF PROTECTION OR SERVICES. (intro.) Continuing
2 need of protection or services may be established by a showing of all any of the
3 following:

4 **SECTION 9.** 48.415 (2) (a) of the statutes is renumbered 48.415 (2) (a) 1.

5 **SECTION 10.** 48.415 (2) (b) of the statutes is renumbered 48.415 (2) (a) 2.

6 **SECTION 11.** 48.415 (2) (c) of the statutes is renumbered 48.415 (2) (a) 3.

7 **SECTION 12.** 48.415 (2) (am) of the statutes is created to read:

8 48.415 (2) (am) That the child has been adjudged to be in need of protection or
9 services and on 3 or more separate occasions has been placed, or continued in a
10 placement, outside his or her home pursuant to one or more court orders under s.
11 48.345, 48.357, 48.363 or 48.365 containing the notice required by s. 48.356 (2).

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

13 48.422 (1) The hearing on the petition to terminate parental rights shall be
14 held within 30 days after the petition is filed. At the hearing on the petition to
15 terminate parental rights the court shall determine whether any party wishes to
16 contest the petition and inform the parties of their rights under ~~sub. (4) and~~ s. 48.423.

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

18 **SECTION 15.** 48.422 (5) of the statutes is amended to read:

19 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
20 continuance of the hearing for the purpose of consulting with an attorney ~~on the~~
21 ~~request for a jury trial or~~ concerning a request for the substitution of a judge.

22 **SECTION 16.** 48.424 (2) (a) of the statutes is amended to read:

23 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

24 **SECTION 17.** 48.424 (2) (c) of the statutes is created to read:

25 48.424 (2) (c) There is no right to a jury trial.

1 **SECTION 18.** 48.424 (3) of the statutes is amended to read:

2 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
3 shall decide whether any grounds for the termination of parental rights have been
4 proven. ~~The court shall decide~~ and what disposition is in the best interest of the child.

5 **SECTION 19.** 48.424 (4) (intro.) of the statutes is amended to read:

6 48.424 (4) (intro.) If grounds for the termination of parental rights are found
7 by the court ~~or jury~~, the court shall find the parent unfit. A finding of unfitness shall
8 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
9 immediately to hear evidence and motions related to the dispositions enumerated in
10 s. 48.427. The court may delay making the disposition and set a date for a
11 dispositional hearing no later than 45 days after the fact-finding hearing if:

12 **SECTION 20.** 48.62 (1) of the statutes is amended to read:

13 48.62 (1) (a) Any person who receives, with or without transfer of legal custody,
14 4 or fewer children or more than 4 children if all of the children are siblings or if par.
15 (c) 1. applies to provide care and maintenance for those children shall obtain a license
16 to operate a foster home from the department, a county department or a licensed
17 child welfare agency as provided in s. 48.75.

18 (b) Any person who receives, with or without transfer of legal custody, 4 or fewer
19 children or more than 4 children if all of the children are siblings or if par. (c) 2.
20 applies into a home to provide care and maintenance and structured, professional
21 treatment for those children shall obtain a license to operate a treatment foster home
22 from the department, a county department or a licensed child welfare agency as
23 provided in s. 48.75.

24 **SECTION 21.** 48.62 (1) (c) of the statutes is created to read:

1 48.62 (1) (c) 1. The department, a county department or a licensed child welfare
2 agency may license a person under par. (a) to operate a foster home to provide care
3 and maintenance for more than 4 children who are not all siblings if the department,
4 county department or licensed child welfare agency determines that providing care
5 and maintenance for more than 4 children who are not all siblings will not be
6 contrary to the welfare of those children.

7 2. The department, a county department or a licensed child welfare agency may
8 license a person under par. (b) to operate a treatment foster home to provide care and
9 maintenance and structured, professional treatment for more than 4 children who
10 are not all siblings if the department, county department or licensed child welfare
11 agency determines that providing those services for more than 4 children who are not
12 all siblings would not be contrary to the welfare of those children.

13 **SECTION 22.** 48.62 (5) of the statutes is created to read:

14 48.62 (5) This section does not apply to a group home licensed under s. 48.625.

15 **SECTION 23.** 48.625 (1) of the statutes is amended to read:

16 48.625 (1) ~~Any~~ Subject to sub. (3), any person who receives, with or without
17 transfer of legal custody, 5 to 8 children, to provide care and maintenance for those
18 children shall obtain a license to operate a group home from the department. To
19 obtain a license under this subsection to operate a group home, a person must meet
20 the minimum requirements for a license established by the department under s.
21 48.67 and pay the license fee under sub. (2). A license issued under this subsection
22 is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

23 **SECTION 24.** 48.625 (3) of the statutes is amended to read:

1 48.625 (3) This section does not apply to a foster home licensed under s. 48.62
2 (1) (a) or a treatment foster home licensed under s. 48.62 (1) (b) in which care and
3 maintenance is provided for more than 4 ~~siblings~~ children.

4 **SECTION 25.** 48.645 of the statutes is created to read:

5 **48.645 Foster care and treatment foster care hotline.** From the
6 appropriation under s. 20.435 (7) (pd), the department shall allocate \$46,000 in each
7 fiscal year to provide a toll-free telephone number that foster parents, treatment
8 foster parents, foster children, treatment foster children, parents with children in
9 foster care or treatment foster care, guardians ad litem, child protection caseworkers
10 and others may call to obtain information about foster care and treatment foster care.

11 **SECTION 26.** 50.01 (1) (a) 1. of the statutes is amended to read:

12 50.01 (1) (a) 1. Care and maintenance above the level of room and board but
13 not including nursing care are provided in the private residence by the care provider
14 whose primary domicile is this residence for 3 or 4 adults, or more adults if all of the
15 adults are siblings, each of whom has a developmental disability, as defined in s.
16 51.01 (5), or, if the residence is licensed as a foster home, care and maintenance are
17 provided to children, the combined total of adults and children so served being no
18 more than 4, or more adults or children if all of the adults or all of the children are
19 siblings or if s. 48.62 (1) (c) 1. applies, or, if the residence is licensed as a treatment
20 foster home, care and maintenance are provided to children, the combined total of
21 adults and children so served being no more than 4, or more adults or children if s.
22 48.62 (1) (c) 2. applies.

23 **SECTION 27. Nonstatutory provisions; health and social services.**

24 (1) FOSTER CARE AND TREATMENT FOSTER CARE HOTLINE. The authorized FTE
25 positions for the department of health and social services are increased by 1.0 FED

1 position on July 1, 1995, to be funded from the appropriation under section 20.435
2 (7) (pd) of the statutes, as affected by this act, for the purpose of staffing the foster
3 care and treatment foster care hotline under section 48.645 of the statutes, as created
4 by this act.

5 **SECTION 28. Initial applicability; circuit courts.**

6 (1) TAKING CHILDREN INTO CUSTODY. The treatment of section 48.21 (1) (a) and
7 (am) of the statutes first applies to children taken into custody on the effective date
8 of this subsection.

9 (2) TERMINATION OF PARENTAL RIGHTS JURY TRIALS. The treatment of sections
10 48.31 (2), 48.415 (intro.), 48.422 (1), (4) and (5) and 48.424 (2) (a) and (c), (3) and (4)
11 (intro.) of the statutes first applies to termination of parental rights hearings under
12 section 48.422 (1) of the statutes, as affected by this act, held on the effective date of
13 this subsection.

14 (3) TERMINATION OF PARENTAL RIGHTS GROUNDS. The treatment of section 48.415
15 (2) (intro.), (a), (am), (b) and (c) of the statutes first applies to a child who is placed,
16 or continued in a placement, outside the child's home by an order under section
17 48.345, 48.357, 48.363 or 48.365 of the statutes entered on the effective date of this
18 subsection.

19 **SECTION 29. Effective dates.** This act takes effect on the day after
20 publication, except as follows:

21 (1) FOSTER CARE AND TREATMENT FOSTER CARE HOTLINE. The treatment of
22 sections 20.435 (7) (pd) and 48.645 of the statutes and SECTION 27 (1) of this act take
23 effect on July 1, 1995 or on the day after publication, whichever is later.

24

(END)