

State of Wisconsin



2017 Assembly Bill 784

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2017 WISCONSIN ACT 253

AN ACT *to renumber and amend* 48.23 (4); *to amend* 48.20 (8) (a), 48.21 (3) (d), 48.213 (2) (d) and 48.23 (3); and *to create* 48.233 of the statutes; **relating to:** the appointment of counsel in a child in need of protection or services proceeding, providing an exemption from emergency rule procedures, granting rule-making authority, and making an appropriation.

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

SECTION 1. 48.20 (8) (a) of the statutes is amended to read:

48.20 (8) (a) If a child is held in custody, the intake worker shall notify the child's parent, guardian, legal custodian, and Indian custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, the right to counsel under s. 48.23, the right to present and cross-examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian, legal custodian, or Indian custodian. The

intake worker shall notify both the child and the child's parent, guardian, legal custodian, or Indian custodian.

SECTION 2. 48.21 (3) (d) of the statutes is amended to read:

48.21 (3) (d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to counsel under s. 48.23, the right to present, confront, and cross-examine witnesses, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b).

SECTION 3. 48.213 (2) (d) of the statutes is amended to read:

48.213 (2) (d) Prior to the commencement of the hearing, the court shall inform the adult expectant mother and the unborn child's guardian ad litem ~~shall be informed by the court~~ of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to counsel under s. 48.23, and the right

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

to ~~present~~, confront, and cross-examine witnesses, and the right to present witnesses.

SECTION 4. 48.23 (3) of the statutes is amended to read:

48.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. ~~Except in proceedings under s. 48.13, at A any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. ~~Except as provided in sub. (2g), the court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.~~~~

SECTION 5. 48.23 (4) of the statutes is renumbered 48.23 (4) (a) and amended to read:

48.23 (4) (a) If a child or a parent under 18 years of age has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the child or parent under 18 years of age to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral. Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child.

(b) In any situation under sub. (2), (2g), or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer the parent or adult expectant mother to the authority for indigency determinations specified under s. 977.07 (1).

(c) In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent

and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

SECTION 6. 48.233 of the statutes is created to read:

48.233 Five-county pilot program. (1) No later than July 1, 2018, the state public defender shall establish a pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to any non-petitioning parent after a petition has been filed under s. 48.255 in a proceeding under s. 48.13.

(2) This section does not apply to a proceeding commenced under s. 48.13 after June 30, 2021.

(3) The state public defender may promulgate rules necessary to implement the pilot program established under sub. (1). The state public defender may promulgate the rules under this subsection as emergency rules under s. 227.24. Notwithstanding s. 227.24 (1) (a) and (3), the state public defender is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until June 30, 2021.

(4) By January 1, 2021, the department and the state public defender shall each submit a report to the joint committee on finance, and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), regarding costs and data from implementing the pilot program under sub. (1).

SECTION 7. Fiscal changes.

(1) PROGRAM OPERATION. In the schedule under section 20.005 (3) of the statutes for the appropriation to the public defender board under section 20.550 (1) (a) of the statutes, the dollar amount for fiscal year 2018-19 is increased by \$739,600 for implementation of the pilot program under section 48.233 of the statutes.