



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4626/1
EAW:amn

2019 ASSEMBLY BILL 566

October 23, 2019 - Introduced by Representatives KULP, DOYLE, DITTRICH, FELZKOWSKI, JAMES, KATSMA, KURTZ, MAGNAFICI, MILROY, MURPHY, MURSAU, RAMTHUN, TUSLER, THIESFELDT, TRANEL and TITTL. Referred to Committee on Family Law.

1 **AN ACT to amend** 48.417 (1) (intro.), 48.417 (2) (intro.), 48.42 (1) (intro.), 48.42
2 (1m) (a), 48.831 (3), 938.23 (3) and 938.23 (4); and **to create** 48.23 (2) (bm) and
3 48.42 (1d) of the statutes; **relating to:** the procedure in a CHIPS or JIPS
4 proceeding for an involuntary termination of parental rights.

Analysis by the Legislative Reference Bureau

This bill allows a petition to terminate parental rights (TPR) to be filed in a proceeding in which it is alleged that a child or juvenile is in need of protection or services (CHIPS or JIPS).

Under current law, a TPR proceeding is initiated by filing a petition with the court assigned to exercise jurisdiction under the Children's Code (juvenile court). A TPR petition initiates a new proceeding that is unrelated to any other ongoing proceedings concerning the child in the juvenile court. Under this bill, a petition to terminate parental rights may be filed in an ongoing CHIPS or JIPS proceeding for the same child.

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:

5 **SECTION 1.** 48.23 (2) (bm) of the statutes is created to read:

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1 48.23 (2) (bm) If a petition to terminate parental rights is filed under s. 48.42
2 (1d) in a proceeding involving a child or juvenile alleged to be in need of protection
3 or services under s. 48.13 or 938.13, any parent who appears before the court shall
4 be represented by counsel as provided under par. (b), beginning with the filing of the
5 petition under s. 48.42 (1d).

6 **SECTION 2.** 48.417 (1) (intro.) of the statutes is amended to read:

7 48.417 (1) FILING OR JOINING IN PETITION; WHEN REQUIRED. (intro.) Subject to sub.
8 (2), an agency or the district attorney, corporation counsel or other appropriate
9 official designated under s. 48.09 shall file a petition under s. 48.42 (1) or (1d) to
10 terminate the parental rights of a parent or the parents of a child, or, if a petition
11 under s. 48.42 (1) or (1d) to terminate those parental rights has already been filed,
12 the agency, district attorney, corporation counsel or other appropriate official shall
13 join in the petition, if any of the following circumstances apply:

14 **SECTION 3.** 48.417 (2) (intro.) of the statutes is amended to read:

15 48.417 (2) FILING OR JOINING IN PETITION; WHEN NOT REQUIRED. (intro.)
16 Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c) or (d)
17 may apply, an agency or the district attorney, corporation counsel or other
18 appropriate official designated under s. 48.09 need not file a petition under s. 48.42
19 (1) or (1d) to terminate the parental rights of a parent or the parents of a child, or,
20 if a petition under s. 48.42 (1) or (1d) to terminate those parental rights has already
21 been filed, the agency, district attorney, corporation counsel or other appropriate
22 official need not join in the petition, if any of the following circumstances apply:

23 **SECTION 4.** 48.42 (1) (intro.) of the statutes is amended to read:

24 48.42 (1) PETITION. (intro.) -A Except as provided under sub. (1d), a proceeding
25 for the termination of parental rights shall be initiated by petition which may be filed

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1 by the child's parent, an agency or a person authorized to file a petition under s. 48.25
2 or 48.835. The petition shall be entitled "In the interest of (child's name), a
3 person under the age of 18" and shall set forth with specificity:

4 **SECTION 5.** 48.42 (1d) of the statutes is created to read:

5 48.42 (1d) PETITION IF CHILD OR JUVENILE ALLEGED TO BE IN NEED OF PROTECTION
6 OR SERVICES. If there is an open proceeding under s. 48.13 or 938.13 for the child, the
7 termination of parental rights may be initiated by filing a petition in that open
8 proceeding. A petition under this subsection shall set forth with specificity the
9 information required in sub. (1) (c) and (e) and shall be subject to the procedures of
10 this subchapter.

11 **SECTION 6.** 48.42 (1m) (a) of the statutes is amended to read:

12 48.42 (1m) (a) If the petition filed under sub. (1) or (1d) includes a statement
13 of the grounds for involuntary termination of parental rights under sub. (1) (c) 2., the
14 petitioner may, at the time the petition under sub. (1) or (1d) is filed, also petition the
15 court for a temporary order and an injunction prohibiting the person whose parental
16 rights are sought to be terminated from visiting or contacting the child who is the
17 subject of the petition under sub. (1) or (1d). Any petition under this paragraph shall
18 allege facts sufficient to show that prohibiting visitation or contact would be in the
19 best interests of the child.

20 **SECTION 7.** 48.831 (3) of the statutes is amended to read:

21 48.831 (3) FACT-FINDING HEARING. The court shall hold a fact-finding hearing
22 on the petition, at which any party may present evidence relevant to the issue of
23 whether the child has a living parent. If the court finds that the child has a living
24 parent, the court shall dismiss the petition or grant the petitioner leave to amend the
25 petition to a petition under s. 48.42 (1) or (1d).

ASSEMBLY BILL 566**SECTION 8**

1 **SECTION 8.** 938.23 (3) of the statutes is amended to read:

2 938.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. Except as provided in this
3 subsection, at any time, upon request or on its own motion, the court may appoint
4 counsel for the juvenile or any party, unless the juvenile or the party has or wishes
5 to retain counsel of his or her own choosing. ~~Except as provided in sub. (2g), the court~~
6 ~~may not appoint counsel for any party other than the juvenile in a proceeding under~~
7 ~~s. 938.13.~~

8 **SECTION 9.** 938.23 (4) of the statutes is amended to read:

9 938.23 (4) PROVIDING COUNSEL. If a juvenile has a right to be represented by
10 counsel or is provided counsel at the discretion of the court under this section and
11 counsel is not knowingly and voluntarily waived, the court shall refer the juvenile
12 to the state public defender and counsel shall be appointed by the state public
13 defender under s. 977.08 without a determination of indigency. ~~In any situation~~
14 ~~under sub. (2g) in which~~ If a parent 18 years of age or over is entitled to
15 representation by counsel; counsel is not knowingly and voluntarily waived; and it
16 appears that the parent is unable to afford counsel in full, or the parent so indicates;
17 the court shall refer the parent to the authority for indigency determinations
18 specified under s. 977.07 (1). In any other situation under this section in which a
19 person has a right to be represented by counsel or is provided counsel at the
20 discretion of the court, competent and independent counsel shall be provided and
21 reimbursed in any manner suitable to the court regardless of the person's ability to
22 pay, except that the court may not order a person who files a petition under s. 813.122
23 or 813.125 to reimburse counsel for the juvenile who is named as the respondent in
24 that petition.

25

(END)