



**SCOTT FITZGERALD**

*Wisconsin State Senator*

13th Senate District

3-6-01

Dan

Enclosed are three letters.

- 1) Judge Bissonette letter  
dtd 2-28-01
- 2) Fitzgerald letter to  
Burke dtd 3-5-01
- 3) Phale/Teskewicz letter  
to Fitzgerald dtd 3-6-01

And... Judge Malmstadt is the  
Milwaukee judge who may also  
share Judge Bissonette's concerns

Thanks Tam Rhatia

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BRANCH THREE  
DODGE COUNTY CIRCUIT COURT  
ANDREW P. BISSONNETTE, CIRCUIT JUDGE

Dodge County Justice Facility  
210 W. Center St., Juneau, Wisconsin 53039-1091  
Fax: (920) 386-3587

Vicki Brom, RPR, RMR, CRR  
Circuit Court Reporter  
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Judicial Assistant  
Phone: (920) 386-3805

February 28, 2001

MAR 01 2001

Senator Scott L. Fitzgerald  
Senator Joanne B. Huelsman  
Senator Kimberly M. Plache  
Senator Fred A. Risser  
Senator Judy Robson  
Senator Carol A. Roessler  
P. O. Box 7882  
Madison, WI 53707-7882

Representative Terese Berceau  
Representative Peter E. Bock  
Representative Steve Kestell  
Representative Margaret Ann Krusick  
P. O. Box 8952  
Madison, WI 53707-8952

Representative Bonnie L. Ladwig  
Representative Carol Owens  
Representative Sheldon A. Wasserman  
P. O. Box 8953  
Madison, WI 53707-8953

Re: 2001 Senate Bill 28

Dear Senators Fitzgerald, Huelsman, Plache, Risser, Robson and Roessler,  
and Representatives Berceau, Bock, Kestell, Krusick, Ladwig, Owens, and Wasserman:

I am writing to you because I see that you are co-sponsors, along with many others, of  
2001 Senate Bill 28.

It appears to me that this bill would allow a person to come into any hospital or police  
department and claim that they are the parent of a newborn baby. They can then deposit the  
baby with that hospital or law enforcement office and walk out without any questions being  
asked. The person who brought the baby there does not have to reveal his or her identity. They  
do not have to indicate whether or not they are married. They do not have to indicate whether  
or not their spouse has any knowledge or has given consent to what they are doing. There is  
no requirement that they identify the other parent. There is no requirement that the person  
provide the medical and genetic history of the birth parents as otherwise required under sec.  
48.425(1)(am) and sec. 48.427(6)(b)(3). There is no requirement for notice to the person known  
or believed to be the other parent.

Obviously I have some concerns about this legislation. I wonder whether it will pass constitutional muster. The United States Supreme Court has indicated that the parent-child relationship is a significant relationship which is entitled to constitutional protection. That relationship cannot be terminated by the State involuntarily without providing a jury trial, an opportunity to be heard, and a court-appointed counsel, if indigent. The State also has to meet the burden of proof to establish good grounds to a reasonable certainty by evidence that is clear, satisfactory and convincing. Courts take care to assure that parents are provided with these rights so that any terminations which do result are on solid grounds legally, and that the adoptions which follow are not going to blow up in someone's face.

I not only have concerns for parents' rights, but as hinted above, I have concerns for spouses' rights as well. Either spouse could bring the newborn baby into the police department and effectively terminate both spouses' rights without the knowledge or consent of the other spouse.

Considering that medical costs have pressured insurance companies to limit hospital stays for child birth to only one or two days, almost any child could be subjected to this process, regardless of whether or not they were born in a hospital.

I do not see anything in the statute which requires any particular showing by the person bringing in the baby that they are a parent of the child. It looks to me like this statute would be triggered by anybody who brings in such a child and claims to be a parent.

Not only should the child have a right to obtain the medical and genetic history of his/her parents, but the child also has a right to support from those parents, as well as a presumed right to be nurtured, cared for and loved, not only by the parents, but also the extended family.

I think that your working assumption is that all of these babies will be adoptable. Unfortunately, this statute may provide a good way for a parent to easily dispose of a child with significant malformations or disabilities, in which case the child may not be adoptable at all.

I know that you are concerned with the well being of children and want to preserve the family whenever possible. I know that you care about parents' rights as well as children's rights. I therefore believe that you will give my questions the thoughtful consideration that they deserve.

Thank you for your attention to this matter.

Sincerely,



**ANDREW P. BISSONNETTE**  
**CIRCUIT JUDGE, BRANCH III**  
**DODGE COUNTY, WISCONSIN**

APB:gs

cc: Gordon Malaise - Legislative Reference Bureau



**SCOTT FITZGERALD**  
*Wisconsin State Senator*  
13<sup>th</sup> Senate District

March 5, 2001

Senator Brian Burke  
P.O. Box 7882  
Madison, WI 53707-7882

Re: Judge Andrew P. Bissonnette's concerns regarding SB 28

Dear Senator Burke,

Many co-sponsors of SB 28 recently received a letter from Hon. Andrew P. Bissonnette, Circuit Court Judge in Dodge County. I noted that you were not listed in the mailing -- and as the lead Senate sponsor, I wanted to provide you with a copy of his letter and echo some of his same concerns. It is my understanding that the bill draft was the product of a thorough analysis by a well-represented task force, but nonetheless, we should still resolve the below listed issues prior to final passage:

- U.S. Supreme Court and state court decisions regarding involuntary termination of parental rights
- The rights of a spouse or birth parent who is unaware of the pregnancy and/or relinquishment
- Statutory inconsistencies
- Validating that the person relinquishing the child is really the parent
- Child's statutory right to genetic history, involvement of extended family, and monetary support from the birth parent

Enclosed is a copy of Judge Bissonnette's letter dated February 28, 2001. Thank you for your attention in this matter. I look forward to hearing from you.

Sincerely,

Scott Fitzgerald  
State Senator  
13<sup>th</sup> Senate District

Enclosure

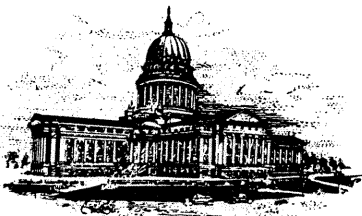
CC: all co-sponsors (see next page)

Senators Rosenzweig, Huelsman, Plache, Risser, Robson, Roessler, Baumgart, Darling, Grobshmidt

Representatives Berceau, Bock, Kestell, Krusick, Ladwig, Owens, Wasserman, Albers, Balow, Boyle, Colon, Cullen, Freese, Gronemus, Hoven, Hubler, Hundertmark, Jensen, Krawczyk, Kreibich, Kreuser, La Fave, J. Lehman, Miller, Montgomery, Musser, Olsen, Ott, Powers, Rhodes, Schneider, Schoof, Sherman, Sinicki, Staskunas, Steinbrink, Suder, Sykora Turner, Urban, Vrakas, Ward

LRB -- Gordon Malaise

Leg. Council -- Anne Sappenfield



# Wisconsin State Assembly

P.O. BOX 8952 • MADISON, WI 53708

March 6, 2001

Senator Scott Fitzgerald  
P.O. Box 7882  
Madison, WI 53707  
HAND DELIVERED

Dear Senator Fitzgerald;

*Scott*

Senator Burke forwarded to us a copy of the letter that you sent to him and other cosponsors of Senate Bill 28 and Assembly Bill 54. We would like to address the concerns that you have reiterated from Judge Andrew Bissonette's letter.

As you are aware, we were co-chairs of the Assembly Speaker's Task Force on Abandoned Babies. Members of the task force included: Sue Armacost, WI Right to Life; Vince Biskupic, Outagamie County District Attorney; Helen Healy, Director of Safe Place for Newborns Dane County; Nancy Korom, Children's Hospital of Wisconsin and Lisa Purtell-Boyce, Planned Parenthood of Wisconsin. The legislation evolved as a result of input garnered from these sessions. The task force unanimously recommended the final bill draft.

Our intent in proposing Safe Harbor legislation is to create a unified law that would provide a safe place for newborns to be abandoned statewide. Thirteen states have enacted similar legislation and over a dozen are proposing this legislation. After careful consideration of other states' language, along with the task force's recommendations, we came up with the current language.

We believe that the concerns you have outlined are either covered by the language in our draft or are already addressed in current statutory language. We would like to address them point by point.

- *U.S. Supreme Court and state court decisions regarding involuntary termination of parental rights.*

In this legislation, we are not addressing current termination of parental rights (TPR) proceedings. Any U.S. Supreme Court and state court decisions would have affected the current proceedings. If there are concerns that people have with current TPR proceedings, that is something that should not be addressed in this bill, but should be brought forward in separate legislation.

- *The rights of a spouse or birth parent who is unaware of the pregnancy and/or relinquishment*

Again, current TPR proceedings address how a parent is noticed. We find it hard to believe that a spouse would not recognize that his/her baby is missing within three days of birth. However, if Judge Bissonnette believes the current TPR proceedings are inadequate in the noticing of spouses or fathers who are unaware of the pregnancy and have thus far been uninvolved in the pregnancy, that is something that should be addressed in separate legislation.

- *Statutory inconsistencies*

The only statutes that Judge Bissonnette references are sections 48.425(1)(am) and 48.427(6)(b)(3) which relate to the medical and genetic history of the birth parents. Your last bullet point raises this same question and we address it there.

A statutory question was raised by the Department of Health and Family Services about the birth certificate of the newborn who was relinquished. We addressed this concern in the substitute amendment, "the intake worker under s.48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14(3)." This is already in current law and the legislation simply cross-references this section.

We have consulted our Legislative Council as well as the Legislative Reference Bureau who drafted this bill and we do not believe that there are statutory inconsistencies in our legislation.

- *Validating that the person relinquishing the child is really the parent.*

The provision of accepting the baby is permissive and it permits taking custody only from the parent. A law enforcement officer, EMT or emergency room staff person who doubts that the person with the newborn is the newborn's parent is not required to accept custody of the newborn. However, we find it hard to believe that someone would kidnap someone else's baby just to relinquish it to a hospital. If this were the case, though, common sense would dictate that the birth parent would contact the proper authorities who would search for the newborn.

- *Child's statutory right to genetic history,...*

Judge Bissonnette is correct, the statutes do require medical information at the time that the parent's rights are terminated. However, if there is no one present to require the information of at the termination hearing, the proceedings will continue.

We believe that requiring the mother to fill out forms at the relinquishment could bar her from safely abandoning her newborn. We would rather have a newborn alive,

without medical history, than have a mother choose not to abandon her baby to a safe haven for fear that filling out forms could compromise her anonymity.

- ... *involvement of extended family*,...

Realistically, a mother who is considering abandoning her baby does not feel comfortable consulting her extended family. Attached you will find a letter from a grandmother whose granddaughter was left on her neighbor's porch and froze to death. This woman's only daughter is now in prison and her granddaughter never had the chance to live. As an extended family member, she would rather the baby was abandoned to a safe place, without her knowledge, than be left to die on her neighbor's porch.

- ...*and monetary support from the birth parent*.

The child who is relinquished will go through normal TPR proceedings and then be put up for adoption. When the parental rights are terminated, the parent is not responsible for monetary support for the newborn.

We hope that we have answered all of your concerns. We ask for your support in committee and on the Senate floor. If you have any further questions, please feel free to contact us directly.

Sincerely,



Suzanne Jeskewitz  
State Representative  
24<sup>th</sup> Assembly District



Jeff Plale  
State Representative  
21<sup>st</sup> Assembly District

cc: Legislative All Senate  
Legislative All Assembly

Anne Sappenfield, Legislative Council; Gordon Malaise, Legislative Reference Bureau





# **BRIAN BURKE**

**WISCONSIN STATE SENATOR**

Senate Chair, Joint Committee on Finance

## **Testimony of Senator Brian Burke Senate Bill 28**

**Before the Senate Committee on Judiciary, Consumer  
Affairs, and Campaign Finance Reform**

**March 6, 2001**

Chairman George, members of the Committee, thank you for allowing me to offer my support for Senate Bill 28, relating to relinquishing custody of a newborn child.

As you know, this legislation is the work product of a task force created to study the issue of newborn abandonment. The task force, led by Representatives Plale and Jeskewitz, included citizens with diverse levels of expertise ranging from law enforcement to children's health. The result of their efforts is a proposal that carefully balances the immediate health needs of a newborn with the privacy rights of a parent who is unwilling or unable to raise a child.

Twelve states enacted infant abandonment laws during the 2000 legislative session and many more states are pursuing similar measures. The task force carefully studied the successes and failures of other state laws in developing this bill for Wisconsin.

I applaud Representatives Plale and Jeskewitz and the members of the task force for their hard work in developing this "safe haven" proposal. Their tireless efforts have produced a bill which will provide mothers with a valuable alternative to abandoning a newborn.

Thank you again for the opportunity to share my thoughts. I appreciate the Committee's quick action on this bill, and I am hopeful you will offer your support for it.

*Testimony in favor of SB28  
March 6, 2001*

*Tim and Helen Healy  
Safe Place for Newborns Wisconsin  
PO Box 628124  
Middleton, WI 53562  
608-827-5949*

A little over a year ago the local news reported on a UW Platteville women who had Kept her pregnancy a secret. She gave birth in her home to an almost full term baby boy and stuffed him under her bed in a backpack. Her mother came in the next morning and rushed her to the doctor for bleeding. After examination, the doctor sent detectives to the house. A 5lb 1-ounce baby boy was found stuffed under the bed.

After speaking with some friends, my husband and I decided we must do something.

We were familiar with the Safe Place for Newborns program my brother helped start in Minnesota. We formed a group of 6 neighbors dedicated to starting Safe Place for Newborns here in our county.

**The founding purpose and continuing mission of Safe Place for Newborns is to save the lives of Newborns in danger of abandonment, and to help preserve the health and future of their mothers.**

Safe place for newborns has worked closely with the District attorneys office Brian Blachard, Department of Human Services and the hospitals of Dane County to allow a woman to anonymously bring her unharmed newborn, up to 3 days old, to any hospital in Dane county without fear of prosecution.

We launched the program July 27, 2000. At that point we were able to begin raising funds. We launched our Billboard and educational campaign last week. We currently have 6 Billboards around Dane County advertising our Web sight and Crisis line.

There are individual groups or hospitals in Lacrosse, Wausau, Oshkosh and Milwaukee that want to start Safe Place for Newborns in their communities. This lead us to begin working with the distinguished representatives Jeff Plale and Sue Jeskewitz. They introduced legislation on this cause around the same time we began Safe Place for Newborns

Safe Place for Newborns supports and these Key Tenets of SB28-

- ◆ Anonymous- If a woman has kept her pregnancy a secret, the guarantee of anonymity will help alleviate her fear that someone will "find out."

- ◆ Unharmful- Our organization does not support any loopholes for child abuse in any areas of the law.
- ◆ Without fear of Prosecution-We support the language in SB 28 that provides complete immunity for the woman, not merely offering a defense of prosecution. Texas has a law that offers a woman a defense of prosecution not immunity from the law and in last count, Texas had 8 children abandoned in the year 2000.
- ◆ 72 Hours- The first hours of a newborn's life are the most critical. We feel that the time limit conveys a sense of urgency. Also if this woman has been hiding the baby, in all likelihood, the newborn is not being kept warm and fed.
- ◆ Hospital- This is an area of the bill that we agonized over. Obviously the best place for this child and the mother is in the hospital. However, there may be times when the fastest way to the hospital is through a law enforcement officer or emergency medical technician.

#### **Safe Place for Newborns Function**

As we have worked with representative Plale and Jeskewitz it has become evident that they want to develop legislation that will allow groups like Safe Place for Newborns to function in the state. I have begun to call this type of legislation empowering legislation. This type of legislation believes in people and their ability to use their expertise to do the right thing.

Across the country lawmakers dealing with abandonment have come up with very different results. Instead of choosing to write empowering legislation, law makers, who may in fact have been trying to do something good, ended up creating a multitude of restrictions and procedures surrounding relinquishing a child.

There were many small details that as an organization we thought should be included in this legislation. But after starting this program in Dane County, we learned that the organizations such as the hospitals should really be the ones to decide the specifics of the program. The hospitals in Dane County were each given examples of policies and procedures used in Minnesota. They used these examples but adapted them to meet the needs of their own communities. Safe Place for Newborns trusts the Hospitals to treat their own patients including woman who might relinquish a child. By legislating restrictions and requirements it will only make their job more difficult.

Once this legislation is passed, we will work closely with the Wisconsin Hospital Association to educate hospitals about this law. We will use the hospitals in Dane County as an example to emulate state wide.

## Conclusion

Why do parents abandon their newborn children? While no one can fully understand why a person would endanger a vulnerable child, a few common denominators present themselves - isolation, denial and fear of being found out.

Mothers (and fathers) who abandon a newborn child often believe that they are, and in fact they may be, utterly and completely alone. Living in this isolation, they are left to wrestle with problems that they are not psychologically or emotionally equipped to handle.

Other women deny their pregnancy, even to themselves. Although denial is a common coping strategy for many of us when we feel overwhelmed, it is difficult for us to comprehend denial of this magnitude - how can you not know you are pregnant? Though society may grapple with understanding how a woman can deny her own pregnancy, many OB-GYN nurses do not. Neo-natal nurse practitioner Edith Bardzilowski has attended more than 1000 deliveries. *"I don't know how many times a woman has said, 'I can't be having a baby - I'm not pregnant' while we were wheeling her into the delivery room,"* says Bardzilowski. *"Some you don't believe, but some you absolutely believe that they had no idea they were pregnant. And these are women of all ages and backgrounds"*

The generally accepted stereotype of a person who abandons a newborn child is that of a teen-age, underprivileged mother. However, our research indicates that this is a tragedy that crosses all categories of age, ethnicity, and socioeconomic status.

By using resources already present in the community, this legislation presents a viable option to a mother or father who may, in a moment of desperation, make a disastrous choice. This is a win situation for all involved: a child's life is saved; a mother or father is saved from a lifetime of guilt and anguish; and the hopes of a family waiting to adopt a child are fulfilled.

We consider our organization a group of ordinary people who saw a problem and hoped we could provide a solution. We need your help to make a difference in our state. Working together we can make the whole State of Wisconsin a Safe Place for Newborns.



**To: Senator, Gary George, Chair  
Members, Committee on Judiciary, and Consumer Affairs**

**From: Maureen O'Brien, Associate Director, State Legislation**

**RE: Support for SB 28**

**Date: March 6, 2001**

On behalf of more than 9,000 physicians statewide, the State Medical Society (SMS) supports SB 28 which deals with relinquishing custody of a newborn child. It's appropriate for Wisconsin to provide a safe haven for infants who would otherwise have been abandoned or worse, those who die due to their abandonment. It's tragic to read about a newborn being placed in a dumpster due to a mother's fear of being found out.

This bill works through the many complex issues of confidentiality, parental rights and the termination of those rights. The anonymous nature and the immunity from prosecution for abandonment of a child within 72 hours of its birth is the cornerstone of the legislation, with the imperative exclusion of immunity of the parent who attempts to surrender/abandon a newborn that has been abused or neglected.

We would like to suggest that during the rules process perhaps there could be an effort to obtain the medical history of the mother/family voluntarily and in a non-threatening manner. If a parent who is relinquishing custody of a child would be willing to give some basic medical background, the SMS feels this would be beneficial in administering appropriate medical care. It should not be a requirement, but a chance to make some of the newborns' health issues known.

With this type of legislation, the State Medical Society hopes newborns that might have been abandoned will receive the appropriate medical care and ultimately be raised in a safe and caring environment.

Many SMS physicians volunteer for programs that educate teens in high schools about a variety of health issues. Physicians also communicate with their patients to increase awareness about where to turn and what resources are available if they or a friend is in need. SMS physicians recognize that legislation without education will not prevent abandonment.

**Testimony – SB28**

**March 6, 2001**

**Presenter: Sherry Quamme**  
**Director, Emergency Services**  
**Meriter Hospital**  
**Madison, WI**

**Todd Van Fossen**  
**Director of Government Relations**  
**Meriter Hospital**

**Position: Support of SB28**

Meriter Hospital is the leading childbirth hospital in Dane County and is a major birthing hospital in Wisconsin with the second highest number of births in the state. Meriter has a long standing concern for the welfare of mothers, babies and families which has been a motivation for the development of educational programs about birthing, mothers/babies social groups, lactation programs and services, Bootcamp for New Dad's and other programs.

Newborn babies should not be found dead in a dumpster, a bookbag, a toilet or any other location because a mother is so desperate, she feels she has no other alternative but to find a way to "just get rid of it"! The "Safe Place For Newborns" program and AB 54 provide the mechanism for the right choice.....mother voluntarily and anonymously surrender her baby to a hospital emergency department, an on duty law enforcement officer or on duty EMT. This saves 2 lives, not just one. The process must be a simple one....mother knows who to call or where to go to get the baby to a Safe Place.

Newborn babies and new mothers are very vulnerable at the time of the delivery and for the time following the birth. Mother is in an emotional state plus, has physical and hormonal changes happening very quickly. Baby can quickly experience low body temperature (hypothermia); low blood sugar (hypoglycemia)



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**WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM**

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TO: REPRESENTATIVES JEFFREY PLALE AND SUZANNE JESKEWITZ

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Fathers' Rights Under 2001 Assembly Bill 54, Relating to Relinquishing Custody of a Newborn Child

DATE: February 28, 2001

This memorandum discusses whether 2001 Assembly Bill 54, relating to relinquishing custody of a newborn child violates the constitutional rights of fathers who are not involved in the relinquishment of custody and whose parental rights are subsequently terminated.

Although it is possible that in the future a court may hold that a father's constitutional rights have been violated due to the fact that it will be very difficult to provide notice of a termination of parental rights (TPR) proceeding to such a father if the mother chooses to remain anonymous, nothing in current case law supports the conclusion that Assembly Bill 54 is unconstitutional.

Assembly Bill 54 was introduced by you; cosponsored by Senate Burke on February 1, 2001. The Assembly Committee on Children and Families has scheduled a public hearing on the bill for March 1, 2001.

**ASSEMBLY BILL 54**

Under Assembly Bill 54, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn.

A parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous under the bill. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity if the person wishes to remain anonymous *unless* the person has reasonable cause to suspect that the child has been abused or neglected. In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a

newborn or any person who assists the parent *unless* the officer, employee or agent has reasonable cause to suspect that the child has been abused or neglected.

The bill affects current law relating to TPR only in that it creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>1</sup> In addition, the bill provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the bill and exercised the right to remain anonymous. The bill specifies a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

### **FATHERS' PARENTAL RIGHTS**

Under the bill, as described above, relinquishment of a newborn is a ground for *involuntary* TPR. Therefore, it will not be an expedited procedure. In addition, even if the mother were to identify herself and voluntarily terminate her parental rights to the child, an unknown or alleged father's rights must still be terminated involuntarily. It is clear that if a father seeks to enforce his parental rights before they are terminated, he may do so.

### **Current Law**

Under current law, even if a father is unknown, he must be given constructive notice of a TPR proceeding. Specifically, if the child who is the subject of a TPR proceeding is a nonmarital child, and paternity has not been established, the following must be given notice:

1. A person who has filed a declaration of parental interest. Such a declaration may be filed with the Department of Health and Family Services (DHFS) by a person claiming to be the father of a nonmarital child who has not been adopted. It may be filed at any time prior to the termination of the father's rights. It must be in writing and contain the person's name and address and the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.
2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child.
3. A person who has lived in a familial relationship with the child and who may be the father of the child. [s. 48.42 (2) (b), Stats.]

If with reasonable diligence a putative father cannot be personally served the TPR petition and summons, service must be made by publication of a newspaper notice. [s. 48.42 (4) (b), Stats.]

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<sup>1</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.



Once notice is published, the court must hold a hearing to determine whether there are grounds to terminate the father's parental rights and must order the TPR if it finds it to be in the child's best interest. [See ss. 48.422, 48.424, 48.426 and 48.427, Stats.]

A person whose parental rights are terminated may file a motion for relief from the judgment or for an appeal within 30 days after the TPR judgment. These are the person's exclusive remedies to obtain a new TPR hearing. [s. 48.46, Stats.]<sup>2</sup>

### Analysis

The U.S. Supreme Court has held that the parental rights of fathers of children born out of wedlock are protected by the constitution. [*Stanley v. Illinois*, 405 U.S. 645, 658, 92 S. Ct. 1208 1216 (1972).] However, the Supreme Court has also held that the rights of natural fathers of children born out of wedlock do not acquire constitutional protection under the Due Process Clause until the unwed father establishes a significant relationship with the child. [*Lehr v. Robertson*, 463 U.S. 248, 261, 103 S. Ct. 2985, 2993 (1983).] In other words, the Supreme Court has not recognized fathers' parental rights based only upon a biological relationship.

The Wisconsin Supreme Court followed this concept in a case in which the court denied a biological father the ability to establish paternity. In that case, a married woman had a relationship with a man who claimed to be the father of two children conceived during their relationship. The man, W.W.W., had not established a relationship with the two children, and claimed he had been prevented from establishing any relationship by the mother and her husband. In that case, the court stated:

The undisputed facts indicate that W.W.W. had only minimal contact with one of the children and did not have a relationship with either of them. We conclude that he did not have a liberty interest in determining his paternity of the children or in a parental relationship with them, as his existing relationship with them was not close to the type of relationship in which the Supreme Court has found a constitutionally protected interest to exist. [*W.W.W. v. M.C.S. and R.J.S.*, 161 Wis. 2d 1015, 468 N.W.2d 719, 725 (1991).]

The Wisconsin Supreme Court has also upheld provisions of current TPR statutes that have limited putative fathers' ability to object to the termination of their parental rights. First, under current law, one of the grounds for involuntary TPR is failure to establish a parental relationship. Under that ground, in order to terminate parental rights, the court must find that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child. In determining whether a person has a substantial relationship with the child, the court may consider daily care of or activities with or support of the child, but may also consider, for alleged fathers, whether the person has ever expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. [s. 48.415 (6), Stats.] Prior to 1988, the court was also required to find that the person had *an opportunity* to establish a substantial parental relationship. The court has upheld the

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<sup>2</sup> It is possible that the supreme court would review a TPR judgment after the time for appeal had elapsed under its original jurisdiction authority if the court found that the case presented an issue of statewide significance. [See s. 809.70, Stats.]

constitutionality of this ground subsequent to the statutory modification. [*Ann M. M. v. Rob S.*, 500 N.W.2d 649, 654, 176 Wis. 2d 673 (1993).]

The Wisconsin Supreme Court also upheld the constitutionality of a provision under which notice of an involuntary TPR proceeding is *not* required to be given to a person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that a sexual assault has occurred. [s. 48.42 (2m), Stats.] The court further held that, under this statute, perpetrators of sexual assault do not have standing to appear and contest a petition for involuntary TPR. [*Id.*, at 653.]

In conclusion, thus far fathers of children born out of wedlock who have not maintained a relationship with a child or the mother of the child have not been afforded constitutional rights to a relationship with their children. Therefore, it is not clear that Assembly Bill 54 will create situations that will be found to violate a father's constitutional rights.

If you have any questions, please feel free to contact me at the Legislative Council Staff offices.

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WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

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2001 Assembly Bill 54

Assembly Amendment 1 to  
Assembly Substitute  
Amendment 1 and Assembly  
Substitute Amendment 1

Memo published: March 5, 2001

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

Under *Assembly Substitute Amendment 1*, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn. A parent may also call 911 to have a law enforcement officer or EMT meet the parent and take the child into custody.

The person taking custody must then take any action necessary to protect the health and safety of the newborn and, within 24 hours, deliver the newborn to a juvenile court intake worker.<sup>1</sup> The person must also file a birth certificate for the child within five days of taking the child into custody.

**Right to Remain Anonymous**

Under the substitute amendment, a parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous and may leave the presence of the law enforcement officer, EMT or hospital emergency room staff person who took custody of the newborn at any time. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity or may follow or pursue the parent or other person *unless* the

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<sup>1</sup> A juvenile court intake worker determines whether to release a child or hold a child in custody, if certain grounds exist. For example, a child may be held in custody if there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If an intake worker decides to hold the child in custody, a hearing must be held to determine whether to continue custody and a petition alleging the child is in need of protection or services must be filed with the juvenile court.

person has reasonable cause to suspect that the child has been abused or neglected<sup>2</sup> or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a newborn or any person who assists the parent unless one of the above exceptions applies.

### **Information for Parent**

Under the substitute amendment, a law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody must make available to the parent relinquishing custody the maternal and child health toll-free number maintained by DHFS. The decision whether to accept the information is entirely voluntary on the part of the parent.

### **Immunity from Liability**

Under the substitute amendment, a parent who relinquishes custody of his or her newborn and any person who assists the parent are immune from civil or criminal liability for any good faith act or omission *in connection with that relinquishment*. This includes immunity for exercising the right to remain anonymous and the right to leave at any time. In addition, it includes immunity from criminal prosecution for child abandonment and child neglect.

Also under the substitute amendment, any law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody is provided immunity from civil or criminal liability. Under *Assembly Amendment 1* to the substitute amendment, this immunity is limited to immunity from civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but does not include immunity for any act or omission occurring in subsequently providing care for the child.

### **Confidentiality**

Under the substitute amendment, information relating to the relinquishment of a newborn is confidential and may not be disclosed except to specified persons.

### **Administrative Rules**

The substitute amendment requires DHFS to promulgate rules to implement the provisions relating to permitting a parent to relinquish custody of a newborn. In promulgating the rules, DHFS must consider the different circumstances under which a parent might relinquish a newborn. The rules must include rules prescribing a means by which a parent who relinquishes custody of a newborn may,

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<sup>2</sup> This provision references the definition of "neglect" contained in s. 48.981 (1) (d), Stats. That section defines "neglect" as failure, refusal or inability on the part of a parent, guardian, legal custodian, or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

until the granting of a termination of parental right (TPR) order, choose to be identified as the child's parent.

**Child in Need of Protection or Services Grounds**

The substitute amendment creates a ground under which the juvenile court has jurisdiction over a newborn whose custody has been relinquished as a child in need of protection or services.<sup>3</sup>

**TPR Grounds and Notice of TPR Proceedings**

The substitute amendment creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>4</sup> In addition, the substitute amendment provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the substitute amendment and exercised the right to remain anonymous. The substitute amendment specifies a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

**Effective Date**

The substitute amendment first applies to a newborn whose custody is relinquished on the effective date of the act.

AS:tlu

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<sup>3</sup> If a child is found to be in need of protection or services, the juvenile court may impose certain dispositions including placing the child in a foster home and transferring legal custody to the county department of human or social services, a licensed child welfare agency or, in Milwaukee County, DHFS.

<sup>4</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.

### Fiscal Estimate — 2001 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number 0609/3	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number AB 54	Administrative Rule Number

Subject  
Taking a Newborn Child into Custody

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |   |

Increase Costs — May be possible to absorb within agency's budget.

Yes  No

Decrease Costs

Local:  No Local Government Costs

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns  Villages  Cities  
 Counties  Others  
 School Districts  WTCS Districts

**Fund Sources Affected**

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Chapter 20 Appropriations

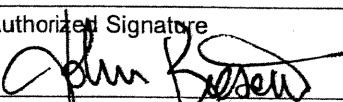
**Assumptions Used in Arriving at Fiscal Estimate**

This bill includes several provisions with regards to relinquishing custody of a newborn child. The main ones include:

- (1) Permitting a newborn child to be taken into custody by a law enforcement officer or certain medical staff persons after custody has been relinquished by the newborn's parent.
- (2) Permitting a parent who wishes to relinquish custody of a newborn, but is unable to travel, to call "911." The "911" dispatcher is required to dispatch a law enforcement officer or medical staff person to meet the parent and take the child into custody.
- (3) Providing a right of anonymity to any parent who relinquishes custody of a newborn under the bill or any person who assists a parent in that relinquishment. It also requires that all records relating to the relinquishment of a child remain confidential.
- (4) Requiring any law enforcement officer or medical staff person who takes a newborn into custody under the bill to make available to the parent the Maternal and Child Health toll-free telephone number and the telephone number of the local health department.
- (5) Providing immunity from civil or criminal liability for any good faith act or omission in connection with relinquishing a newborn under the bill and provides immunity to any law enforcement officer or medical staff person any good faith act or omission in connection with duties under the bill.

(Continued)

**Long-Range Fiscal Implications**

Prepared By: Jason Witt	Telephone No. 266-9364	Agency DHFS/OSF
Authorized Signature 	Telephone No. 266-9622	Date (mm/dd/ccyy) 02/22/01

(6) Permitting a juvenile court to exercise jurisdiction over a newborn child who has been relinquished under the bill and who is alleged to be in need of protection and services and to grant an involuntary TPR over a newborn child on the grounds that custody of the newborn child has been relinquished under the bill.

The bill also requires the Department to promulgate rules implementing its provisions. This bill would have no fiscal impact on the Department or local government health and social service agencies.

February 20, 2001

I am writing this letter in the hope that it will one day prevent the needless death or injury to a precious newborn and keep another family from having to go through the pain and heartache of watching someone they love go on trial for murder as my only daughter did.

There are probably not very many people who realize how easily this tragedy can happen. All it takes is for your daughter, granddaughter, niece, or sister to meet the wrong sort of male and you instantly have a combination for disaster.

Perhaps my husband and I could have done more to make sure our daughter did not become sexually active at 15 years old. Perhaps we could have paid more attention to her every personality change, bad mood, and every other emotion that teenage girls go through. Maybe that would have prevented the tragedy to come. I can't be sure. We will never know.

Perhaps we were just too confident in our parenting skills because we've successfully raised two sons and became oblivious to the things our daughter was saying and doing.

All the "maybes" and "what-ifs" in the world can't change the fact that our daughter is now in prison, convicted of involuntary manslaughter, and our granddaughter is dead.

What you can change is the outcome when the next terrified young girl decides to anonymously abandon her baby.

Our daughter was too scared to tell anyone about her pregnancy. I've learned that many young women feel the same way. Some of them, many still children themselves, are so scared that they will do anything to conceal the pregnancy. These girls will give birth alone because the terror of disappointing their parents is worse than the possibility of dying during unattended childbirth. After denying for as many as nine months that they are pregnant, suddenly they have a baby and they think, "what do I do now?"

This happened to our daughter. After giving birth alone, she bathed her baby girl, put Cabbage Patch doll clothes on her, and wrapped her in a towel she found in the attic. I ask you, does this sound like the actions of a murderer? She laid on the sofa with her baby until it was almost time for my husband and I to come home from work then realizing she had to do something, she took her baby to the neighbor's back steps and left her there for them to find and take to the proper authorities. Unfortunately, the neighbors didn't find our granddaughter in time!

To my sorrow, I have found out that these young girls feel they have no choice and this is often the tragic outcome. I am pleading with you to give these girls a choice to let them know there is a better solution than unsafe abandonment. That



PAGE 2

solution is often adoption. I certainly would rather see my granddaughter being raised by a loving, adoptive family and my daughter consoled by the thought that she did the right thing.

I don't disagree with those who say that the best solution is to prevent the pregnancy through promoting abstinence and other means. But for those times when nothing you can say or do will change what has already happened, the Safe Haven law, with it's guarantee of anonymity for mothers who feel they need it, is the next best thing. I support the Safe Haven bill wholeheartedly and hope you will also.

Sincerely,

A grieving mother and grandmother

(The name of the writer is being withheld from the public to protect the privacy of family members. For more information, contact Dawn Geras at SAVING ABANDONED BABIES.)

**Planned Parenthood of Wisconsin Testimony for SB 28 - Safe havens for Newborns**

Hi, my name is Lisa Boyce. I am the Vice President of Public Affairs for Planned Parenthood of Wisconsin. Through our 31 clinics across the state, we serve 65,000 patients by providing breast and cervical cancer screening, STI testing and treatment, pregnancy counseling, contraception services and abstinence based, age appropriate sexuality education. Our mission at PPW is to provide women and men with the education and direct clinic services to enable them to make responsible choices, have a healthy future and when they are ready, to have healthy wanted children. We have served the reproductive health care needs for the men and women of Wisconsin for over 66 years and as such are experienced in assessing and addressing the reproductive health care needs of our population.

As a member of the task force that helped to draft this initiative, Planned Parenthood recognizes that this legislation could be important to preserving the life of a newborn child and providing desperate women with options and important life saving information. As such, we support SB 28 and thank the sponsors of this initiative for including Planned Parenthood of WI in the drafting of this important legislation.

We especially applaud the inclusion of a provision in the bill that calls for a health care provider to provide a toll free hotline to the parent to address their health and welfare needs. Through this provision entitled, "information for parent" contained on page 6, line 6 through line 14, the healthcare needs of **both** the child and parent are addressed in the bill.

Addressing the healthcare informational needs of the parent, by disseminating hotline information, is essential in child abandonment cases to ensure the woman's physical and mental health following a difficult pregnancy and childbirth experience. Many of these women have hidden their pregnancies and delivered these babies on their own and have not received any medical attention. With these special circumstances in mind, it is essential that the woman's health care needs remain in this bill.

We praise the sponsors of this bill for understanding the importance of providing this information to these needy women and urge you to reject any efforts to amend this bill by deleting references to these important phone numbers.

Finally, while Planned Parenthood of Wisconsin supports this potential life saving legislation, this bill unfortunately does not address the underlying cause of abandoned children - unintended pregnancy. Though the task force did not want to address the larger issues surrounding child abandonment in this bill, I think it is important and appropriate to comment on the need to address this larger issue so we can begin to work toward preventing child abandonment.

Nationwide over 50% of all pregnancies are unintended. These unwanted pregnancies can result in poor or no prenatal care, low birth weight, birth defects, infant death, abortion or child abandonment. Child abandonment laws are appealing because they appear to provide a simple, feel-good solution, but in reality, they are addressing a complex problem that requires a more comprehensive solution.

While we support this initiative, we urge the Legislature not to check this issue off as solved.

On the contrary, if we want to save lives and ensure healthy, wanted babies and healthy mothers, then in addition to providing safe harbors for newborns, we need to provide women with real opportunities to make good choices for themselves and their children. By removing barriers of access to information and services around contraception and improving the availability of medically accurate education we will better address the root causes of unintended pregnancy and further limit the occurrences of child abandonment.

Again, while we support SB 28 as it is currently drafted, there are various ways to make this existing proposal more comprehensive to address the prevalence of unintended pregnancy that we would like to note. While we know that a more comprehensive approach to child abandonment is not the will of the task force that drafted this provision, it is our hope that this Legislature will share in our goal of working toward preventing unintended pregnancy and child abandonment by pursuing the following suggestions as a separate bill if necessary:

- Advancing a provision that would require an information packet drafted by DHFS be made available to parents relinquishing custody to include detailed information on post partum care, family planning information, clinic locations and/or hotline phone numbers to answer a range of questions.
- Advancing a provision that monitors the number of babies abandoned under this new system to determine the scope of the problem and whether there is any increase or decrease over time. If there is a significant number of or an increase in the occurrences of baby abandonment's that would be an important indicator that additional resources are needed to boost comprehensive sexuality education programming and/or improved access to affordable family planning services.
- Advancing a provision to encourage schools to increase the availability of abstinence based, comprehensive sexuality education and creating incentives for school boards and teachers to include this curricula by allocating grant funds for training and materials.

Until the education, family planning and pre-natal care is embraced as readily as these safe havens and understood as essential to ensuring healthy mothers, fathers and healthy wanted babies; we will continue to have unintended pregnancy and abandoned children.

Creating safe havens is an important step to improving the outcome of abandon children, but education and ready access to confidential health care services is the only way to prevent the tragedy of child abandonment and to ensure healthy outcomes for women and their children.

We applaud the sponsors for working with us in addressing this important issue and challenge our representatives to work with us to further improve our efforts to prevent these unnecessary tragedies.

Thank you for your time and consideration.



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**WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM**

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TO: REPRESENTATIVES JEFFREY PLALE AND SUZANNE JESKEWITZ

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Fathers' Rights Under 2001 Assembly Bill 54, Relating to Relinquishing Custody of a Newborn Child

DATE: February 28, 2001

This memorandum discusses whether 2001 Assembly Bill 54, relating to relinquishing custody of a newborn child violates the constitutional rights of fathers who are not involved in the relinquishment of custody and whose parental rights are subsequently terminated.

Although it is possible that in the future a court may hold that a father's constitutional rights have been violated due to the fact that it will be very difficult to provide notice of a termination of parental rights (TPR) proceeding to such a father if the mother chooses to remain anonymous, nothing in current case law supports the conclusion that Assembly Bill 54 is unconstitutional.

Assembly Bill 54 was introduced by you; cosponsored by Senate Burke on February 1, 2001. The Assembly Committee on Children and Families has scheduled a public hearing on the bill for March 1, 2001.

**ASSEMBLY BILL 54**

Under Assembly Bill 54, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn.

A parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous under the bill. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity if the person wishes to remain anonymous *unless* the person has reasonable cause to suspect that the child has been abused or neglected. In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a

newborn or any person who assists the parent *unless* the officer, employee or agent has reasonable cause to suspect that the child has been abused or neglected.

The bill affects current law relating to TPR only in that it creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>1</sup> In addition, the bill provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the bill and exercised the right to remain anonymous. The bill specifies a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

### **FATHERS' PARENTAL RIGHTS**

Under the bill, as described above, relinquishment of a newborn is a ground for *involuntary* TPR. Therefore, it will not be an expedited procedure. In addition, even if the mother were to identify herself and voluntarily terminate her parental rights to the child, an unknown or alleged father's rights must still be terminated involuntarily. It is clear that if a father seeks to enforce his parental rights before they are terminated, he may do so.

### **Current Law**

Under current law, even if a father is unknown, he must be given constructive notice of a TPR proceeding. Specifically, if the child who is the subject of a TPR proceeding is a nonmarital child, and paternity has not been established, the following must be given notice:

1. A person who has filed a declaration of parental interest. Such a declaration may be filed with the Department of Health and Family Services (DHFS) by a person claiming to be the father of a nonmarital child who has not been adopted. It may be filed at any time prior to the termination of the father's rights. It must be in writing and contain the person's name and address and the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.
2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child.
3. A person who has lived in a familial relationship with the child and who may be the father of the child. [s. 48.42 (2) (b), Stats.]

If with reasonable diligence a putative father cannot be personally served the TPR petition and summons, service must be made by publication of a newspaper notice. [s. 48.42 (4) (b), Stats.]

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<sup>1</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.

Once notice is published, the court must hold a hearing to determine whether there are grounds to terminate the father's parental rights and must order the TPR if it finds it to be in the child's best interest. [See ss. 48.422, 48.424, 48.426 and 48.427, Stats.]

A person whose parental rights are terminated may file a motion for relief from the judgment or for an appeal within 30 days after the TPR judgment. These are the person's exclusive remedies to obtain a new TPR hearing. [s. 48.46, Stats.]<sup>2</sup>

### Analysis

The U.S. Supreme Court has held that the parental rights of fathers of children born out of wedlock are protected by the constitution. [*Stanley v. Illinois*, 405 U.S. 645, 658, 92 S. Ct. 1208 1216 (1972).] However, the Supreme Court has also held that the rights of natural fathers of children born out of wedlock do not acquire constitutional protection under the Due Process Clause until the unwed father establishes a significant relationship with the child. [*Lehr v. Robertson*, 463 U.S. 248, 261, 103 S. Ct. 2985, 2993 (1983).] In other words, the Supreme Court has not recognized fathers' parental rights based only upon a biological relationship.

The Wisconsin Supreme Court followed this concept in a case in which the court denied a biological father the ability to establish paternity. In that case, a married woman had a relationship with a man who claimed to be the father of two children conceived during their relationship. The man, W.W.W., had not established a relationship with the two children, and claimed he had been prevented from establishing any relationship by the mother and her husband. In that case, the court stated:

The undisputed facts indicate that W.W.W. had only minimal contact with one of the children and did not have a relationship with either of them. We conclude that he did not have a liberty interest in determining his paternity of the children or in a parental relationship with them, as his existing relationship with them was not close to the type of relationship in which the Supreme Court has found a constitutionally protected interest to exist. [*W.W.W. v. M.C.S. and R.J.S.*, 161 Wis. 2d 1015, 468 N.W.2d 719, 725 (1991).]

The Wisconsin Supreme Court has also upheld provisions of current TPR statutes that have limited putative fathers' ability to object to the termination of their parental rights. First, under current law, one of the grounds for involuntary TPR is failure to establish a parental relationship. Under that ground, in order to terminate parental rights, the court must find that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child. In determining whether a person has a substantial relationship with the child, the court may consider daily care of or activities with or support of the child, but may also consider, for alleged fathers, whether the person has ever expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. [s. 48.415 (6), Stats.] Prior to 1988, the court was also required to find that the person had *an opportunity* to establish a substantial parental relationship. The court has upheld the

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<sup>2</sup> It is possible that the supreme court would review a TPR judgment after the time for appeal had elapsed under its original jurisdiction authority if the court found that the case presented an issue of statewide significance. [See s. 809.70, Stats.]

constitutionality of this ground subsequent to the statutory modification. [*Ann M. M. v. Rob S.*, 500 N.W.2d 649, 654, 176 Wis. 2d 673 (1993).]

The Wisconsin Supreme Court also upheld the constitutionality of a provision under which notice of an involuntary TPR proceeding is *not* required to be given to a person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that a sexual assault has occurred. [s. 48.42 (2m), Stats.] The court further held that, under this statute, perpetrators of sexual assault do not have standing to appear and contest a petition for involuntary TPR. [*Id.*, at 653.]

In conclusion, thus far fathers of children born out of wedlock who have not maintained a relationship with a child or the mother of the child have not been afforded constitutional rights to a relationship with their children. Therefore, it is not clear that Assembly Bill 54 will create situations that will be found to violate a father's constitutional rights.

If you have any questions, please feel free to contact me at the Legislative Council Staff offices.

AS:ksm;wu



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WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

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2001 Assembly Bill 54

Assembly Amendment 1 to  
Assembly Substitute  
Amendment 1 and Assembly  
Substitute Amendment 1

Memo published: March 5, 2001

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

Under *Assembly Substitute Amendment 1*, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn. A parent may also call 911 to have a law enforcement officer or EMT meet the parent and take the child into custody.

The person taking custody must then take any action necessary to protect the health and safety of the newborn and, within 24 hours, deliver the newborn to a juvenile court intake worker.<sup>1</sup> The person must also file a birth certificate for the child within five days of taking the child into custody.

**Right to Remain Anonymous**

Under the substitute amendment, a parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous and may leave the presence of the law enforcement officer, EMT or hospital emergency room staff person who took custody of the newborn at any time. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity or may follow or pursue the parent or other person *unless* the

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<sup>1</sup> A juvenile court intake worker determines whether to release a child or hold a child in custody, if certain grounds exist. For example, a child may be held in custody if there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If an intake worker decides to hold the child in custody, a hearing must be held to determine whether to continue custody and a petition alleging the child is in need of protection or services must be filed with the juvenile court.



person has reasonable cause to suspect that the child has been abused or neglected<sup>2</sup> or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a newborn or any person who assists the parent unless one of the above exceptions applies.

### **Information for Parent**

Under the substitute amendment, a law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody must make available to the parent relinquishing custody the maternal and child health toll-free number maintained by DHFS. The decision whether to accept the information is entirely voluntary on the part of the parent.

### **Immunity from Liability**

Under the substitute amendment, a parent who relinquishes custody of his or her newborn and any person who assists the parent are immune from civil or criminal liability for any good faith act or omission *in connection with that relinquishment*. This includes immunity for exercising the right to remain anonymous and the right to leave at any time. In addition, it includes immunity from criminal prosecution for child abandonment and child neglect.

Also under the substitute amendment, any law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody is provided immunity from civil or criminal liability. Under *Assembly Amendment 1* to the substitute amendment, this immunity is limited to immunity from civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but does not include immunity for any act or omission occurring in subsequently providing care for the child.

### **Confidentiality**

Under the substitute amendment, information relating to the relinquishment of a newborn is confidential and may not be disclosed except to specified persons.

### **Administrative Rules**

The substitute amendment requires DHFS to promulgate rules to implement the provisions relating to permitting a parent to relinquish custody of a newborn. In promulgating the rules, DHFS must consider the different circumstances under which a parent might relinquish a newborn. The rules must include rules prescribing a means by which a parent who relinquishes custody of a newborn may,

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<sup>2</sup> This provision references the definition of "neglect" contained in s. 48.981 (1) (d), Stats. That section defines "neglect" as failure, refusal or inability on the part of a parent, guardian, legal custodian, or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

until the granting of a termination of parental right (TPR) order, choose to be identified as the child's parent.

**Child in Need of Protection or Services Grounds**

The substitute amendment creates a ground under which the juvenile court has jurisdiction over a newborn whose custody has been relinquished as a child in need of protection or services.<sup>3</sup>

**TPR Grounds and Notice of TPR Proceedings**

The substitute amendment creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>4</sup> In addition, the substitute amendment provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the substitute amendment and exercised the right to remain anonymous. The substitute amendment specifies a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

**Effective Date**

The substitute amendment first applies to a newborn whose custody is relinquished on the effective date of the act.

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<sup>3</sup> If a child is found to be in need of protection or services, the juvenile court may impose certain dispositions including placing the child in a foster home and transferring legal custody to the county department of human or social services, a licensed child welfare agency or, in Milwaukee County, DHFS.

<sup>4</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.

# State of Wisconsin



**GARY R. GEORGE**  
**SENATOR**

**TO:** Members, Senate Committee on Judiciary and Consumer Affairs and  
Campaign Finance Reform

**FROM:** Dan Rossmiller, Clerk  
Senate Committee on Judiciary and Consumer Affairs and Campaign  
Finance Reform

**RE:** PAPER BALLOT EXECUTIVE SESSION-- Senate Bill 28, relating to  
relinquishing custody of a newborn child and granting rule-making  
authority.

**DATE:** March 7, 2001

Attached please find a PAPER BALLOT for SB 28.

Please return the ballot by noon today.

Senate Bill 28 relates to relinquishing custody of newborn babies and is being referred to by some as the "abandoned babies" bill.

Attached also, please find a copy of a substitute amendment to Senate Bill 28 (LRB s0054/1) a copy of a Legislative Council memorandum describing identical provisions of AB 54 and a copy of a Legislative Council memorandum regarding father's parental rights as they relate to the bill and substitute amendment.

Thank you for your cooperation.

**Senate Committee on Judiciary and Consumer Affairs and Campaign  
Finance Reform**

**Request for Paper Ballot Executive Action on 2001 Senate Bill 28**

The Senate Committee on Judiciary and Consumer Affairs and Campaign Finance Reform was unable to hold an Executive Session on Senate Bill 28 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by noon Wednesday, March 7, 2001.**

**Introduction and Adoption of Substitute Amendment (LRB s0054/1):**

- \_\_\_\_\_ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Substitute Amendment)
- \_\_\_\_\_ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Substitute Amendment)
- \_\_\_\_\_ **Aye** (In Favor of Adoption of the Substitute Amendment)
- \_\_\_\_\_ **No** (Oppose Adoption of the Substitute Amendment)

**Passage of Senate Bill 28 As Amended:**

- \_\_\_\_\_ Moved (Optional -- Please check if you wish to Move Passage of the Bill as Amended)
- \_\_\_\_\_ Seconded (Optional -- Please check if you wish to Second Passage of the Bill as Amended)
- \_\_\_\_\_ **Aye** (In Favor of Passage of the Bill as Amended)
- \_\_\_\_\_ **No** (Oppose Passage of the Bill as Amended)

Signed: \_\_\_\_\_

March 7, 2001

Please return to Sen. George's Office by noon Wednesday, March 7, 2001.



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**WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM**

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TO: REPRESENTATIVES JEFFREY PLALE AND SUZANNE JESKEWITZ

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Fathers' Rights Under 2001 Assembly Bill 54, Relating to Relinquishing Custody of a Newborn Child

DATE: February 28, 2001

This memorandum discusses whether 2001 Assembly Bill 54, relating to relinquishing custody of a newborn child violates the constitutional rights of fathers who are not involved in the relinquishment of custody and whose parental rights are subsequently terminated.

Although it is possible that in the future a court may hold that a father's constitutional rights have been violated due to the fact that it will be very difficult to provide notice of a termination of parental rights (TPR) proceeding to such a father if the mother chooses to remain anonymous, nothing in current case law supports the conclusion that Assembly Bill 54 is unconstitutional.

Assembly Bill 54 was introduced by you; cosponsored by Senate Burke on February 1, 2001. The Assembly Committee on Children and Families has scheduled a public hearing on the bill for March 1, 2001.

**ASSEMBLY BILL 54**

Under Assembly Bill 54, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn.

A parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous under the bill. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity if the person wishes to remain anonymous *unless* the person has reasonable cause to suspect that the child has been abused or neglected. In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a

newborn or any person who assists the parent *unless* the officer, employee or agent has reasonable cause to suspect that the child has been abused or neglected.

The bill affects current law relating to TPR only in that it creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>1</sup> In addition, the bill provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the bill and exercised the right to remain anonymous. The bill specifies a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

### **FATHERS' PARENTAL RIGHTS**

Under the bill, as described above, relinquishment of a newborn is a ground for *involuntary* TPR. Therefore, it will not be an expedited procedure. In addition, even if the mother were to identify herself and voluntarily terminate her parental rights to the child, an unknown or alleged father's rights must still be terminated involuntarily. It is clear that if a father seeks to enforce his parental rights before they are terminated, he may do so.

### **Current Law**

Under current law, even if a father is unknown, he must be given constructive notice of a TPR proceeding. Specifically, if the child who is the subject of a TPR proceeding is a nonmarital child, and paternity has not been established, the following must be given notice:

1. A person who has filed a declaration of parental interest. Such a declaration may be filed with the Department of Health and Family Services (DHFS) by a person claiming to be the father of a nonmarital child who has not been adopted. It may be filed at any time prior to the termination of the father's rights. It must be in writing and contain the person's name and address and the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.
2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child.
3. A person who has lived in a familial relationship with the child and who may be the father of the child. [s. 48.42 (2) (b), Stats.]

If with reasonable diligence a putative father cannot be personally served the TPR petition and summons, service must be made by publication of a newspaper notice. [s. 48.42 (4) (b), Stats.]

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<sup>1</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.

Once notice is published, the court must hold a hearing to determine whether there are grounds to terminate the father's parental rights and must order the TPR if it finds it to be in the child's best interest. [See ss. 48.422, 48.424, 48.426 and 48.427, Stats.]

A person whose parental rights are terminated may file a motion for relief from the judgment or for an appeal within 30 days after the TPR judgment. These are the person's exclusive remedies to obtain a new TPR hearing. [s. 48.46, Stats.]<sup>2</sup>

### Analysis

The U.S. Supreme Court has held that the parental rights of fathers of children born out of wedlock are protected by the constitution. [*Stanley v. Illinois*, 405 U.S. 645, 658, 92 S. Ct. 1208 1216 (1972).] However, the Supreme Court has also held that the rights of natural fathers of children born out of wedlock do not acquire constitutional protection under the Due Process Clause until the unwed father establishes a significant relationship with the child. [*Lehr v. Robertson*, 463 U.S. 248, 261, 103 S. Ct. 2985, 2993 (1983).] In other words, the Supreme Court has not recognized fathers' parental rights based only upon a biological relationship.

The Wisconsin Supreme Court followed this concept in a case in which the court denied a biological father the ability to establish paternity. In that case, a married woman had a relationship with a man who claimed to be the father of two children conceived during their relationship. The man, W.W.W., had not established a relationship with the two children, and claimed he had been prevented from establishing any relationship by the mother and her husband. In that case, the court stated:

The undisputed facts indicate that W.W.W. had only minimal contact with one of the children and did not have a relationship with either of them. We conclude that he did not have a liberty interest in determining his paternity of the children or in a parental relationship with them, as his existing relationship with them was not close to the type of relationship in which the Supreme Court has found a constitutionally protected interest to exist. [*W.W.W. v. M.C.S. and R.J.S.*, 161 Wis. 2d 1015, 468 N.W.2d 719, 725 (1991).]

The Wisconsin Supreme Court has also upheld provisions of current TPR statutes that have limited putative fathers' ability to object to the termination of their parental rights. First, under current law, one of the grounds for involuntary TPR is failure to establish a parental relationship. Under that ground, in order to terminate parental rights, the court must find that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child. In determining whether a person has a substantial relationship with the child, the court may consider daily care of or activities with or support of the child, but may also consider, for alleged fathers, whether the person has ever expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. [s. 48.415 (6), Stats.] Prior to 1988, the court was also required to find that the person had *an opportunity* to establish a substantial parental relationship. The court has upheld the

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<sup>2</sup> It is possible that the supreme court would review a TPR judgment after the time for appeal had elapsed under its original jurisdiction authority if the court found that the case presented an issue of statewide significance. [See s. 809.70, Stats.]

constitutionality of this ground subsequent to the statutory modification. [*Ann M. M. v. Rob S.*, 500 N.W.2d 649, 654, 176 Wis. 2d 673 (1993).]

The Wisconsin Supreme Court also upheld the constitutionality of a provision under which notice of an involuntary TPR proceeding is *not* required to be given to a person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that a sexual assault has occurred. [s. 48.42 (2m), Stats.] The court further held that, under this statute, perpetrators of sexual assault do not have standing to appear and contest a petition for involuntary TPR. [*Id.*, at 653.]

In conclusion, thus far fathers of children born out of wedlock who have not maintained a relationship with a child or the mother of the child have not been afforded constitutional rights to a relationship with their children. Therefore, it is not clear that Assembly Bill 54 will create situations that will be found to violate a father's constitutional rights.

If you have any questions, please feel free to contact me at the Legislative Council Staff offices.

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WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

2001 Assembly Bill 54

Assembly Amendment 1 to  
Assembly Substitute  
Amendment 1 and Assembly  
Substitute Amendment 1

Memo published: March 5, 2001

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

Under *Assembly Substitute Amendment 1*, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person may take a child who the person reasonably believes is 72 hours old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn. A parent may also call 911 to have a law enforcement officer or EMT meet the parent and take the child into custody.

The person taking custody must then take any action necessary to protect the health and safety of the newborn and, within 24 hours, deliver the newborn to a juvenile court intake worker.<sup>1</sup> The person must also file a birth certificate for the child within five days of taking the child into custody.

**Right to Remain Anonymous**

Under the substitute amendment, a parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous and may leave the presence of the law enforcement officer, EMT or hospital emergency room staff person who took custody of the newborn at any time. No one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity or may follow or pursue the parent or other person *unless* the

<sup>1</sup> A juvenile court intake worker determines whether to release a child or hold a child in custody, if certain grounds exist. For example, a child may be held in custody if there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If an intake worker decides to hold the child in custody, a hearing must be held to determine whether to continue custody and a petition alleging the child is in need of protection or services must be filed with the juvenile court.

person has reasonable cause to suspect that the child has been abused or neglected<sup>2</sup> or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a newborn or any person who assists the parent unless one of the above exceptions applies.

### **Information for Parent**

Under the substitute amendment, a law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody must make available to the parent relinquishing custody the maternal and child health toll-free number maintained by DHFS. The decision whether to accept the information is entirely voluntary on the part of the parent.

### **Immunity from Liability**

Under the substitute amendment, a parent who relinquishes custody of his or her newborn and any person who assists the parent are immune from civil or criminal liability for any good faith act or omission *in connection with that relinquishment*. This includes immunity for exercising the right to remain anonymous and the right to leave at any time. In addition, it includes immunity from criminal prosecution for child abandonment and child neglect.

Also under the substitute amendment, any law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody is provided immunity from civil or criminal liability. Under *Assembly Amendment 1* to the substitute amendment, this immunity is limited to immunity from civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but does not include immunity for any act or omission occurring in subsequently providing care for the child.

### **Confidentiality**

Under the substitute amendment, information relating to the relinquishment of a newborn is confidential and may not be disclosed except to specified persons.

### **Administrative Rules**

The substitute amendment requires DHFS to promulgate rules to implement the provisions relating to permitting a parent to relinquish custody of a newborn. In promulgating the rules, DHFS must consider the different circumstances under which a parent might relinquish a newborn. The rules must include rules prescribing a means by which a parent who relinquishes custody of a newborn may,

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<sup>2</sup> This provision references the definition of "neglect" contained in s. 48.981 (1) (d), Stats. That section defines "neglect" as failure, refusal or inability on the part of a parent, guardian, legal custodian, or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

until the granting of a termination of parental right (TPR) order, choose to be identified as the child's parent.

**Child in Need of Protection or Services Grounds**

The substitute amendment creates a ground under which the juvenile court has jurisdiction over a newborn whose custody has been relinquished as a child in need of protection or services.<sup>3</sup>

**TPR Grounds and Notice of TPR Proceedings**

The substitute amendment creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 72 hours old or younger.<sup>4</sup> In addition, the substitute amendment provides that notice is not required to be given to a parent who has relinquished custody of a newborn as provided in the substitute amendment and exercised the right to remain anonymous. The substitute amendment specifies a person who is not given notice does not have standing to appear and contest a TPR petition. This provision does not apply, however, to a parent who chooses to be identified as the child's parent prior to the granting of a TPR order.

**Effective Date**

The substitute amendment first applies to a newborn whose custody is relinquished on the effective date of the act.

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<sup>3</sup> If a child is found to be in need of protection or services, the juvenile court may impose certain dispositions including placing the child in a foster home and transferring legal custody to the county department of human or social services, a licensed child welfare agency or, in Milwaukee County, DHFS.

<sup>4</sup> The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.