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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

**2005-06**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Children and Families (AC-CF)**

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

## Assembly

### Record of Committee Proceedings

#### Committee on Children and Families

##### Assembly Bill 521

Relating to: termination of parental rights and adoption, granting rule-making authority, and providing a penalty.

By Joint Legislative Council.

July 05, 2005

Referred to Committee on Children and Families.

August 4, 2005

#### **PUBLIC HEARING HELD**

Present: (5) Representatives Kestell, Albers, Jeskewitz,  
Grigsby and Seidel.

Absent: (3) Representatives Vos, Vukmir and Sinicki.

#### Appearances For

- Anne Sappenfield — Legislative Council
- Sue Jeskewitz — State Representative, 24th Assembly District
- Patrick Kenney, Wauwatosa — Milwaukee County District Attorney's Office
- Mary Sowinski, Wauwatosa — Milwaukee County District Attorney's Office
- Theresa Roetter, Madison — State Bar-Children and the Law Section
- Elizabeth Schaefer, Milwaukee — Lutheran Social Services

#### Appearances Against

- None.

#### Appearances for Information Only

- Ron Hermes, Madison — DHFS
- Cathy Connelly, Madison — DHFS

#### Registrations For

- Jason Westphal, Madison — State Bar-Children and the Law Section

#### Registrations Against

- Sarah Diedrick-Kasdorf, Madison — Wisconsin Counties Association

September 8, 2005

**EXECUTIVE SESSION HELD**

Present: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Absent: (2) Representatives Vukmir and Sinicki.

Moved by Representative Albers, seconded by Representative Vos  
that **a0923** be recommended for introduction.

Ayes: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Noes: (0) None.  
Absent: (2) Representatives Vukmir and Sinicki.

INTRODUCTION RECOMMENDED, Ayes 6, Noes 0

Moved by Representative Albers, seconded by Representative  
Jeskewitz that **a0923** be recommended for adoption.

Ayes: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Noes: (0) None.  
Absent: (2) Representatives Vukmir and Sinicki.

ADOPTION RECOMMENDED, Ayes 6, Noes 0

Moved by Representative Jeskewitz, seconded by Representative  
Seidel that **a0940** be recommended for introduction.

Ayes: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Noes: (0) None.  
Absent: (2) Representatives Vukmir and Sinicki.

INTRODUCTION RECOMMENDED, Ayes 6, Noes 0

Moved by Representative Albers, seconded by Representative  
Seidel that **a0940** be recommended for adoption.

Ayes: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Noes: (0) None.  
Absent: (2) Representatives Vukmir and Sinicki.

ADOPTION RECOMMENDED, Ayes 6, Noes 0

Moved by Representative Jeskewitz, seconded by Representative Grigsby that **a0949/2** be recommended for introduction.

Ayes: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Noes: (0) None.  
Absent: (2) Representatives Vukmir and Sinicki.

INTRODUCTION RECOMMENDED, Ayes 6, Noes 0

Moved by Representative Albers, seconded by Representative Jeskewitz that **a0949/2** be recommended for adoption.

Ayes: (6) Representatives Kestell, Vos, Albers,  
Jeskewitz, Grigsby and Seidel.  
Noes: (0) None.  
Absent: (2) Representatives Vukmir and Sinicki.

ADOPTION RECOMMENDED, Ayes 6, Noes 0

Moved by Representative Albers, seconded by Representative Jeskewitz that **Assembly Bill 521** be recommended for passage as amended.

Ayes: (4) Representatives Kestell, Vos, Albers and  
Jeskewitz.  
Noes: (2) Representatives Grigsby and Seidel.  
Absent: (2) Representatives Vukmir and Sinicki.

PASSAGE AS AMENDED RECOMMENDED, Ayes 4, Noes 2

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David Matzen  
Committee Clerk

AS amended

# Vote Record Committee on Children and Families

Date: 9-8-05

Moved by: Albers

Seconded by: Jeskewitz

AB S21

SB \_\_\_\_\_

Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_

SJR \_\_\_\_\_

Appointment \_\_\_\_\_

AR \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for: **AS AMENDED**

- Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement
- Introduction       Rejection       Tabling       Nonconcurrence

Committee Member

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Steve Kestell, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Robin Vos</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Sheryl Albers</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Suzanne Jeskewitz</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Leah Vukmir •</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Tamara Grigsby</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Christine Sinicki •</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Donna Seidel</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed



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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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**2005 Assembly Bill 521**

**Assembly Amendments 1, 2,  
and 3**

*Memo published:* September 12, 2005

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

Assembly Bill 521 relates to adoption and termination of parental rights (TPR) law.

**ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 makes three changes to the bill.

*First*, the amendment deletes provisions of the bill under which a parent who is incarcerated and subject to a child in need of protection or services (CHIPS) order would receive only services ordered by the court that are available in the correctional facility.

*Second*, the amendment provides that a person who is petitioning to terminate the parental rights of a father of a nonmarital child under the age of one whose mother is voluntarily terminating her parental rights to place the child for adoption *may* require the mother to complete an affidavit providing information about the alleged father and then provide notice of the TPR proceeding only to alleged fathers who have filed a declaration of paternal interest or who have lived in a familial relationship with the child. Under the bill, the requirement to file an affidavit and provide notice only to certain alleged fathers is required in all TPR proceedings for private adoptions of nonmarital children under one year of age.

*Third*, the amendment requires the Department of Health and Family Services (DHFS) to pay for preadoption training for parents proposing to adopt children through the child welfare system. Under the bill, the county, in all counties but Milwaukee, in which the prospective adoptive parent resides must pay for the training. For parents living in Milwaukee County, the bill requires DHFS to pay for the training.

### **ASSEMBLY AMENDMENT 2**

Assembly Amendment 2 provides that a person who may be the father of a nonmarital child whose paternity has not been established and who does not have standing to contest a TPR petition may contest a petition to terminate his parental rights if the person appears at the hearing, establishes paternity, and proves the following by a preponderance of the evidence:

- That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.
- That the mother left the state without notifying or informing that person that she could be located in this state.
- That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.
- That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

### **ASSEMBLY AMENDMENT 3**

Assembly Amendment 3 modifies changes made to the ground for involuntary TPR of prior involuntary TPR to another child.

Under the bill, a person's parental rights may be terminated upon a showing that:

- The child who is the subject of the TPR petition has been adjudged CHIPS on the grounds that he or she has been abandoned, abused, or neglected or is at risk of being abused or neglected.
- The parent's parental rights to another child have been terminated within the prior three years.

Assembly Amendment 3 provides that, if the child has been adjudged CHIPS on the ground of being at risk of abuse or neglect, there must also be a showing that the parent has failed to remedy the conditions responsible for court intervention and there is substantial likelihood that the parent will not remedy those conditions within the following nine-month period.

### **LEGISLATIVE HISTORY**

Assembly Amendments 1, 2, and 3 were offered by the Assembly Committee on Children and Families on September 8, 2005. On that date, the committee recommended adoption of the amendments on votes of Ayes, 6; Noes, 0. The committee also recommended passage of the bill, as amended, on a vote of Ayes, 4; Noes, 2.

AS:jal



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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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**2005 Assembly Bill 521**

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

*Memo published:* December 23, 2005

*Contact:* Anne Sappenfield, Senior Staff Attorney (267-9485)  
Laura Rose, Deputy Director (266-9791)

**Assembly Substitute Amendment 1**

2005 Assembly Bill 521, as amended by Assembly Substitute Amendment 1, relating to termination of parental rights (TPR) and adoption, does all of the following:

- Modifies current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings to permit notice of a TPR proceeding to be given only to a father who has filed a declaration of paternal interest or who has lived in a familial relationship with the child if the child is less than one year of age and the birth mother files an affidavit with the TPR petition identifying the father and stating her intent to place the child for adoption.
- Modifies several grounds for involuntary TPR as follows:
  - ***Failure to assume parental responsibility:*** Requires a showing that the parent or person who may be the parent has not had a substantial parental relationship with the child instead of that the parent or person who may be the parent has *never* had a substantial relationship with the child.
  - ***Prior involuntary TPR to another child:*** Permits involuntary termination of parental rights if the child who is the subject of the petition has been adjudged to be in need of protection or services (CHIPS) because he or she is at risk of being abused or neglected and, within three years of the CHIPS adjudication, a court has ordered the involuntary TPR with respect to another child of the person. Under current law, this ground may be used only for a child who has been adjudged CHIPS because he or she has been abandoned, abused, or neglected. The bill also permits involuntary TPR under this ground of a child who is born while a TPR petition based upon this ground is pending for the child's sibling.



- ***Continuing need of protection and services:*** Requires a showing under the TPR ground of continuing need of protection and services that there is a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the home within the 9-month, instead of the 12-month, period following the TPR fact-finding hearing, among other factors.
- Provides that the grounds for involuntary TPR apply to parents and to persons who may be the parent of the child.
- Modifies several provisions relating to TPR and CHIPS, including:
  - Providing that the county where the dispositional order was entered has jurisdiction to review an agency decision or order involving the placement of the child.
  - Providing that when a child welfare services client changes county of residence, that the new county of residence must be notified of the change by the prior county of residence.
  - Allowing a person to give voluntary consent to TPR by telephone or live audiovisual means, if unable to appear in person at the hearing.
  - Providing that notice of a TPR proceeding may be given to the parents of a child who was relinquished as a newborn in a “safe haven” case by publication in a newspaper rather than by personal service.
  - Clarifying the role of a guardian ad litem appointed for a parent who is not competent, in a contested TPR proceeding involving a child found to be in need of protection or services.
  - Creating a penalty for making a false statement or representation of material fact in the course of a TPR proceeding with the intent to prevent a person who is entitled to receive notice of the TPR proceeding from receiving notice. The bill provides that it is not a violation of this provision for a person to refuse to make a statement if, at the time of the refusal, the person stated that he or she feared that making such a statement would put the person or another person at risk of domestic abuse.
- Makes various procedural changes relating to appeals in TPR proceedings, including:
  - The timing of filing of a notice of intent to appeal.
  - Requiring notification of certain persons when an appeal is not pursued.
  - Permitting the state public defender to rely, in a TPR appeal, upon an indigency determination made for purposes of trial representation.
  - Providing for continued representation of a person in a TPR appeal by an attorney who represented the person in a TPR proceeding if that attorney filed the notice of intent to appeal, unless the attorney was previously discharged.
  - Requiring the court to provide written notification, to a person whose parental rights are being terminated, of the time limits for appeal of the judgment.
  - Providing for the enlargement of time for filing a notice of appeal in a TPR case.
  - Prohibiting any person, for any reason, from collaterally attacking a TPR judgment more than one year after the date on which the time limit for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided.

- Makes several changes in adoption law, including:
  - Prohibiting publishing adoption advertisements that violate current law.
  - Placing a cap on the amount that proposed adoptive parents may pay for the cost of maternity clothes for the birth mother and increasing the amount proposed adoptive parents may pay for living expenses and a gift for the birth mother.
  - Providing that a proposed adoptive parent who lives out-of-state may petition the court for a pre-adoptive placement of the child in their home if criteria under their state's laws are met.
  - Requiring a court, in a proceeding for the adoption of a child by nonrelatives, to order the person or persons who are petitioning to adopt the child, if they have not previously adopted any children, to obtain pre-adoption preparation on issues that may confront adoptive parents.
  - Providing that if voluntary agreement for the placement of the child, or a guardianship order for the child, is in place, that it shall remain in effect until all proceedings relating to a TPR petition or appeal are concluded.
- Grants the Bureau of Milwaukee Child Welfare the right to judicial review of an administrative law judge's decision, in cases where an administrative law judge has made a licensing decision that the bureau disagrees with and wishes to appeal.

**Differences Between Substitute Amendment and Original bill**

Assembly Substitute Amendment 1 differs from the original bill in the following respects:

- Deletes provisions of the bill under which a parent who is incarcerated and subject to a child in need of protection or services (CHIPS) order would receive only services ordered by the court that are available in the correctional facility.
- Provides that a person who is petitioning to terminate the parental rights of a father of a nonmarital child under the age of one whose mother is voluntarily terminating her parental rights to place the child for adoption may require the mother to complete an affidavit providing information about the alleged father and then provide notice of the TPR proceeding only to alleged fathers who have filed a declaration of paternal interest or who have lived in a familial relationship with the child. Under the bill, a petitioner is required to file an affidavit and provide notice only to certain alleged fathers in all TPR proceedings for private adoptions of nonmarital children under one year of age.
- Requires the Department of Health and Family Services (DHFS) to pay for preadoption training for parents proposing to adopt children through the child welfare system, rather than the counties.
- Provides that a person who may be the father of a nonmarital child whose paternity has not been established and who does not have standing to contest a TPR petition may contest a petition to terminate his parental rights if the person appears at the hearing, establishes paternity, and proves the following by a preponderance of the evidence:
  - That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.
  - That the mother left the state without notifying or informing that person that she could be located in this state.

- That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.
- That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.
- Modifies changes made to the ground for involuntary TPR of prior involuntary TPR to another child.
- Deletes the provisions of the bill that specify that a foster parent who appeals an agency decision to remove a child from the home is a party to that proceeding and that expand the information that must be made available to a foster parent in such a proceeding.
- Deletes the provisions of the bill that statements made by a parent in the course of a psychological examination, and the results of tests and diagnoses are not privileged.
- Provides that the offense of knowingly making a false statement or representation with the intent of depriving someone of notice to a TPR proceeding does not apply to a person who remains silent as to the identity of the father if the person proves that she did so because she was a victim of domestic abuse as evidenced by a recent overt act.

#### **Assembly Amendment 1 to the Substitute Amendment**

Assembly Amendment 1 does the following:

- Removes language that requires a showing that a parent has failed to remedy the conditions responsible for juvenile court intervention and that there is a substantial likelihood that the parent will not remedy those conditions within the nine-month period following the TPR fact-finding hearing in an action to involuntarily terminate the parent's parental rights based upon the following ground: (a) that the child who is the subject of the TPR proceeding has been found to be CHIPS because he or she is at risk of abuse or neglect; and (b) that the parent's parental rights to another child have been terminated within the prior three years.
- Provides that the provision of current law generally prohibiting advertising relating to adoption does not apply to a state-funded foster care and adoption resource center or a state-funded post-adoption resource center.
- Provides that the state adoption information exchange, the state adoption center, or a state-funded foster care and adoption resource center, in addition to the entities specified under the substitute amendment, may provide pre-adoption training. Under the substitute amendment, this training is required for first-time adoptive parents and may be provided by a licensed child welfare agency, a licensed private adoption agency, or a state-funded post-adoption resource center.
- Clarifies that a court may enlarge the time limit for filing a notice of appeal, in addition to the time limit for filing a notice of intent to appeal.

#### **Legislative History**

On December 13, 2005, the Assembly adopted Assembly Amendment 1 to Assembly Substitute Amendment 1 and Assembly Substitute Amendment 1, as amended, on voice votes. The Assembly passed Assembly Bill 521, as amended, on a vote of Ayes, 92; Noes, 4.

AS:LR:rv



July 28, 2005

Mr. Steve Kestell, Chair  
Assembly Committee on Children and Families  
Room 17 West  
P.O. Box 8952  
State Capitol  
Madison, WI 53708

RE: 2005 Assembly Bill 521

Dear Mr. Kestell:

As you know, I was a public member of the committee which helped create AB 521. One of the significant changes in the bill would be a modification to the current paternity registry system which Wisconsin has. As you know the surrounding states have paternity registries that would be quite different than the one which is proposed for Wisconsin.

During the course of our committee deliberations, at one point it was suggested that in addition to the proposed paternity registry legislation that we allow parties the option of proceeding under the current parent notification rules found in Sec. 48.42, Stats. and other statutes. Several adoption lawyers have expressed concern that the new procedure is hard to understand, would be difficult to administer and may result in notice errors which could taint the outcome of termination of parental rights actions. Although I was a public member of the committee and had a role in the drafting of the paternity registry legislation, I found it difficult to explain the operation of the system envisioned to others.


At the last committee meeting, it was suggested that we use the current procedure as an option to the proposed paternity notification procedure. On further reflection, I believe that is an appropriate modification to the proposed legislation.

I regret I will be out of state at the time of your committee meeting and will be unable to present testimony which in general would be very positive concerning the specific aspects of the proposed legislation. The committee worked very hard and at times worked out reasonable compromises when there were differences of opinion between members. With

Mr. Steve Kestell, Chair  
Page 2  
July 28, 2005

the addition of the optional language concerning parental notification and registration, I would wholeheartedly support passage of the bill.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stephen W. Hayes".

Stephen W. Hayes

SWH:wlg

cc: Laura Rose, Joint Legislative Council





**SCHOENBOHM & SCHOENBOHM, S.C.**

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RICHARD B. SCHOENBOHM

FAX (920) 735-5840

**July 29, 2005**

Mr. Steve Kestell, Chair  
Assembly Committee on Children and Families  
Room 17 West  
P.O. Box 8952  
State Capital  
Madison, WI 53708

**RE: 2005 Assembly Bill 521**

Dear Mr. Kestell:

I live in Appleton, Wisconsin. I have been a member of the Outagamie County Bar Association for 25 years. I am also a member of the American Academy of Adoption Attorneys. For many years I have had an extensive practice assisting birth parents with their adoption plans.

I have reviewed 2005 Assembly Bill 521. I would like to thank you and the committee that produced this bill. I think it is a significant step forward in creating an understandable, equitable and fair arena for termination of parental rights and adoption. However, I am concerned about the provisions in regard to paternity registry.

I found the new procedure hard to understand, and a potential trap for the unwary. While I specialize in termination of parental rights and adoption, many attorneys throughout the state only dabble in that area. These new, and complex procedures, which only apply in certain cases, may result in many court procedures being unintentionally flawed. Even with knowledgeable practitioners, judges and social workers, the procedures introduce a great deal of uncertainty. It is very hard to measure whether sufficient notice has been given, whether proper addresses have been used, and basically whether the burden of providing notice to an alleged father has been sufficiently met.

I am also concerned that the burden of implementing the procedures under the act falls too much on the birth mother. It seems inequitable that the man, who has just as much responsibility as the mother for the conception of the child, gets to have his rights spoon fed to him. With today's far-reaching means of communication, I think that a putative father should take responsibility to learn what his rights and obligations are in regard to a registry, and they take the first step to register.

Mr. Steve Kestell, Chair

Finally, I am very concerned that the paternity registry is at great variance with laws of the surrounding states. Some national uniformity in the paternity registry law will benefit putative fathers, birth mothers, and practitioners in this area of the law. In fact a movement is afoot for a national paternity registry. Wisconsin should begin to align itself with those registries of other states that have many years of testing and fine tuning behind them.

Unfortunately, I will be out of the state of Wisconsin at the time of your committee meeting and will be unable to present testimony. My testimony would have been very supportive of most aspects of the proposed legislation. However, I would strongly urge that the paternity registry provisions be eliminated, or be made optional.

Sincerely,

A handwritten signature in black ink, appearing to read 'RBS', with a long horizontal flourish extending to the right.

RICHARD B. SCHOENBOHM

RBS:cmh

cc: Laura Rose, Joint Legislative Council



**REMARKS OF REPRESENTATIVE SUZANNE JESKEWITZ, CHAIR,  
SPECIAL COMMITTEE ON ADOPTION AND TERMINATION OF  
PARENTAL RIGHTS LAW  
TO THE ASSEMBLY COMMITTEE ON CHILDREN AND FAMILIES**

*August 4, 2005*

Good morning and thank you for the opportunity to present Assembly Bill 521.

The bill contains the recommendations of the Special Committee on Adoption and Termination of Parental Rights Law.

I will describe the major provisions of the bill recommended by the committee. The report you received details all of the provisions.

**Termination of Parental Rights**

- The bill modifies current law relating to declarations of paternal interest, or what is commonly referred to as a birth father registry. The bill requires a birth mother who wishes to place an infant for adoption to complete an affidavit identifying the father of the child. The father is then contacted and given the opportunity to file a form declaring that he believes he may be the father of the child. If he files the declaration or has lived with the child in a family setting, he will receive notice and the right to participate in the proceeding to terminate his parental rights so that the child may be adopted. If he does not meet either of those criteria, he will not receive notice and will not have a right to participate. This provision applies only to private adoptions.

- The bill allows the termination of parental rights to a child who is at risk of being abused or neglected if the parent's parental rights to another child were terminated. Under current law, the subsequent child must actually be abused or neglected.
- The bill modifies the ground for involuntary TPR to a child who is in continuing need of protection or services (CHIPS) so that the court must determine if the parent is likely to meet the conditions in the CHIPS order within the upcoming nine months instead of the upcoming 12 months.
- The bill modifies the ground for involuntary TPR of failure to assume parental responsibility so that the court must find that the parent has not had a substantial parental relationship with the child instead of that the parent has never had a substantial relationship with the child.
- The bill clarifies that a guardian ad litem must be appointed for a parent who is incompetent in a contested TPR proceeding and sets forth the duties of these GALS.
- The bill creates a penalty for making false statements in the course of a TPR proceeding with the intent to prevent a person from receiving notice of the TPR proceeding.

- The bill permits a parent who is unable to appear in person at a voluntary TPR hearing to provide consent to a TPR by telephone or through live audiovisual means.
- The bill specifies that statements a parent makes during a court-ordered examination, such as a psychological examination, and any diagnoses or test results arising from the examination are not privileged and may be used in later proceedings under the Children's Code.
- The bill prohibits any person, for any reason, from collaterally attacking or appealing a TPR judgment more than one year after the judgment is final.

### **Adoption**

- The bill prohibits newspapers and other publications from publishing adoption advertisements that violate current law.
- The bill places a \$300 cap on the amount that proposed adoptive parents may pay for the cost of maternity clothes for the birth mother and increases the amount proposed adoptive parents may pay for living expenses to \$5,000 and increases the amount they may pay for a gift for the birth mother to \$100.
- The bill provides that a proposed adoptive parent who lives out of state may petition the court for a pre-adoptive placement of the child in their home if criteria under their state's law are met.

- The bill requires a person or persons who are planning to adopt a child to obtain preparation and training, if they have not adopted any prior children, on issues that may confront adoptive parents.

### **Child Welfare Cases**

- The bill requires a county to notify a person's new county of residence if the person is receiving child welfare services.
- The bill specifies what services must be ordered if a parent who is subject to a CHIPS order is incarcerated.





**MEMORANDUM**

TO: Honorable Members of the Assembly Committee on Children and Families

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate **SDK**

DATE: August 4, 2005

SUBJECT: Assembly Bill 521

The Wisconsin Counties Association (WCA) opposes Assembly Bill 521 at this time due to the additional requirements placed on county child welfare workers. Unfortunately in Wisconsin, funding from the state and federal governments for child welfare services is insufficient to meet current needs. The fiscal reality faced by county human services departments makes the additional requirements in this bill impractical for county child welfare staff.

At this time, counties have indicated to us two specific provisions included in the bill that are of concern. First, Section 18 provides that services under a dispositional order for a parent who is serving a prison sentence must be limited during any period of incarceration to services that are available within the correctional institution and requires the agency primarily responsible for the provision of services to do all of the following:

- Advise the parent of services that may be available within the correctional institution.
- Advise the correctional institution of the services to be provided under the juvenile court order and, if the child is placed outside the home, of the conditions contained in the juvenile court order for the safe return of the child to the home.
- Monitor the parent's participation and progress in relevant services made available to the parent within the correctional institution.
- Arrange for visitation between the parent and child if the juvenile court finds that visitation is in the best interests of the child.

This provision increases the workload for county social workers as they must now become experts on services provided within each of the state's correctional institutions. In addition, county social workers will now be required to monitor parents' participation in programs while in a correctional setting. WCA believes that these functions could best be provided by correctional institution staff. There is great concern among counties with the language specifying the agency "arrange for visitation between the parent and the child..." Counties do not have the resources to arrange and provide transportation services to correctional institutions across the state. In addition, it is likely county staff will need to accompany juveniles on their visits to the correctional institutions taking time away from other service needs.

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The second portion of the bill identified as a concern for counties is found in Section 59 of the bill. This section of the bill creates preadoption preparation for proposed adoptive parents and requires the county to fund preadoption preparation services if the juvenile is in the child welfare system. Clearly, this provision represents a new unfunded mandate on county government.

While our counties have noted that this bill makes many positive changes in the laws affecting adoption and termination of parental rights, counties cannot afford to implement the provisions listed above. WCA wishes to work with the committee to amend the bill so we may lend our support in the future to this legislation.

Thank you for considering our comments.





OFFICE OF DISTRICT ATTORNEY  
CHILDREN'S COURT CENTER

# Milwaukee County

E. MICHAEL McCANN • District Attorney

**TO:** Representative Kestell, Chairperson  
Assembly Committee on Children and Families

**FROM:** Deputy District Attorney Patrick Kenney  
Milwaukee County District Attorney's Office

**DATE:** August 4, 2005

**RE:** **Assembly Bill 521**

Beginning in approximately 2000, the Milwaukee County District Attorney's Office in cooperation with the Bureau of Milwaukee Child Welfare (BMCW) and the Milwaukee County circuit court began a concerted effort to meet the expectations for permanency for foster children outlined in federal law. That effort was strengthened in the summer of 2002, when a federal court consent decree resolved a civil rights lawsuit filed on behalf of children in foster care in Milwaukee County, and required the filing of TPR petitions for certain percentages of foster care children, each year, for a three-year period.

Accordingly, the number of Termination of Parental Rights (TPR) petitions filed by the Milwaukee County District Attorney's Office nearly quadrupled between the passage of the federal law in 1997 and the entry of the consent decree in 2002. Specifically, the 227 TPR petitions that were filed in 1997 increased to 719 in 2002, and further increased to 857 in 2003. This dramatic increase was made possible by the incredible commitment of everyone involved in the Milwaukee County Children's Court system. Resources were devoted to increase ADA's and judges to litigate the cases. Solicitations were made to large Milwaukee law firms to provide legal representation to parents; even a new courtroom was built in an effort to comply with both federal law and the requirements of the consent decree.

Currently, TPR litigation impacts a significant portion of the children that have been placed in Milwaukee County's foster care system. According to the most recent BMCW analysis of compliance with the federal court's consent decree, nearly one-third of the children who left foster care in the last six months did so through adoption into safe and loving families.

**Despite this incredible improvement, however, we are faced with the unfortunate reality that we simply cannot comply with the time-limit requirements established by state statutes, federal law and the consent decree without significant changes to the statutes that govern TPR proceedings.** AB 521 makes changes to Chapter 48 to accommodate efficient and timely processing of TPR cases, and better meet the needs of the biological and adoptive families of the children that we serve. The committee that developed the legislation had broad representation from district attorneys, public defenders, foster parents, and circuit court judges. Passage of AB 521 is essential for Milwaukee and other counties to efficiently and fairly manage their foster care cases while complying with both state and federal law.





State of Wisconsin  
**Department of Health and Family Services**

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Jim Doyle, Governor  
Helene Nelson, Secretary

**2005 Assembly Bill 521**  
**Department of Health and Family Services Testimony**  
**Before the**  
**Assembly Committee on Children and Families**

**August 4, 2005**

Good morning, Chairman Kestell and members of the committee. My name is Ron Hermes and I am the Legislative Liaison for the Department of Health and Family Services. With me is Cathleen Connolly with the Division of Children and Family Services.

I thank you for the opportunity to testify, today, on Assembly Bill 521. The Department appreciates the work done on this bill by Representative Jeskewitz and members of the Legislative Council Study Committee on Adoption and the Termination of Parental Rights (TPR) Law.

I am testifying today on behalf of Sec. Nelson for informational purposes to share with you the sections of this bill that the Department supports and the sections in which the Department has concern.

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The Department supports the following provisions:

- Changing the substantial parental relationship termination of parental rights (TPR) ground from “never had” a substantial parental relationship to requiring clear and convincing evidence that the parent has “not had” a substantial parental relationship with the child;
- Modifying the prior involuntary TPR ground to include children at risk of abuse or neglect based on the abuse or neglect of a sibling;
- Modifying the TPR ground requiring a parent to meet the conditions set forth in the Child in need of Protection or Services (CHIPS) order within the upcoming 9 months instead of 12 months;
- Providing parents with written notice of the time limits for TPR appeals;
- Requiring preadoption preparation for parents who are first-time adoptive parents;
- Requiring that fair hearings held in cases where the agency is removing a child from a foster home, treatment foster home, or family-operated group home be held in the county where the dispositional order placing the child was entered or where the voluntary agreement placing the child was made; and
- Requiring that when a person who is receiving child welfare services moves to another county the original county must give notice to the new county or state agency.

The Department also supports the provision specifying that the Bureau of Milwaukee Child Welfare (BMCW) has the right to a judicial appeal of an adverse administrative decision regarding the licensing, renewing, or continued licensing of a foster home or treatment foster home.

The Department also has a few concerns with the bill as currently drafted.

- Under the section on Declaration of Paternal Interest, the Department is very concerned with the change which prohibits DHFS from releasing a declaration of paternal interest to the Department of Workforce Development or a county child support agency. Title IV-E of the federal Social Security Act requires that children whose out of home care is funded under Title IV-E money (foster care funding) must be referred to child support agencies for collection of parental support. The federal standard that the state must meet says in part that; *“all steps will be taken, including cooperative efforts with the State agencies administering the program ... to secure an assignment to the State of any rights to support on behalf of any child receiving foster care maintenance payments.”* It is the Department’s interpretation that *“taking all steps,”* includes sharing information in the Paternal Registry with child support agencies.
- Our concern is that the federal Department of Health and Human Services may challenge this change during federal reviews or audits of the Title IV-E program in Wisconsin. Any challenge by the feds could threaten IV-E funding statewide and cause some individual children to be ineligible for Title IV-E funding. Any loss of Title IV-E funding would negatively impact Wisconsin’s ability to maintain an effective child welfare system, including keeping children safe through maximizing federal funding for out-of-home care.
- The Department also recommends adding a good cause exception to the provision requiring the petitioner in a TPR action to obtain from the mother an affidavit that



identifies or describes the father. This would allow the mother to decline to identify the father if her or the child's safety is at risk.

- The Department also suggests a good cause exception should be included in the provision creating a criminal penalty for making a false statement or representation of material fact with the intent to prevent a person who is entitled to receive notice of the TPR proceeding from receiving notice.
- The Department is concerned that removing the client-patient privilege from statements made by a parent, and the result of any tests conducted and any diagnosis made in the course of an examination or assessment ordered by the juvenile court in a CHIPS or TPR or other Chapter 48 proceeding, may result in less open exchanges between the parent and a provider with whom the parent is communicating.
- This bill has a fiscal impact on the Department. It is anticipated there will be an increased frequency of use of the Paternal Registry given the new and more stringent obligations in determining whether a person has filed a declaration of paternal interest. In addition, the Department will be responsible for accepting and maintaining a record of revocations. Finally, the bill requires the Department to do outreach on the existence and use of the registry. The Registry is presently maintained by part-time clerical staff. The potential increase in use and sophistication of the Registry under this bill will most likely result in the Department having to create and maintain a computerized data base to fully implement the intent of the bill. A full-time employee will be necessary to administer the program

- Finally, the Department is deeply concerned with the provision limiting the types of services available to incarcerated parents to only those provided in the correctional institution. If the correctional institution does not have the appropriate services available, the parent may not have access to the necessary rehabilitation services to reunite the parent with the child at the end of their incarceration. This provision may undermine the Department's ability to meet federal requirements that *...reasonable efforts have been made to reunify the child with his or her parents.*

Again, I want to thank you for the opportunity to provide the Department's feedback on this bill. I would be happy to answer any questions.





To: Assembly Committee on Children and Families  
From: Wendy Paget, Policy Analyst  
Re: AB 521  
Date: August 22, 2005

The Wisconsin Council on Children and Families is a non-partisan, non-profit organization working to ensure that all children are raised in a safe and nurturing family and community. We analyze critical issues and legislation that affect children and families and work with policy makers to help inform policies that improve their well-being.

We recognize that Assembly Bill 521 resulted from the hard work of the Special Committee on Adoption and Termination of Parental Rights law. Their assignment was to consider modifications to current law to encourage adoptions and make the TPR process more efficient and cost effective. While there are certain provisions of the bill we support, we have concerns with some of the current language in AB 521. We appreciate your consideration of these concerns listed below as you deliberate this significant bill.

1. *Declaration of Parental Interest*

Under current law, a putative father could file a declaration of parental interest any time prior to the termination of parental rights. The change to limit the time for filing to 14 days after the child's birth is particularly problematic if the parents of the child are not in communication because the father may not know when the child was born. Perhaps tying the timeline to the TPR proceeding, rather than the birth of the child would make more sense, such as limiting it to 14 days after a TPR proceeding is filed. Additionally, in instances where a man is alleged to be a father, he has 21 days to file a declaration after notification of the allegation by the petitioner; it seems counterintuitive that he would have less time to file if he was not alleged to be the father. Finally, there is no good cause exception for men who may be unable, due to illness or absence from the country, to file a timely declaration. Given the huge consequences of failure to file, there should be such an exception.

2. *Incarcerated Parent Provision*

The proposed section related to incarcerated parents could serve to effectively terminate the parental rights of all incarcerated parents of children under CHIPS orders. Given the problems with prison and jail overcrowding and the scarcity of resources, there is a substantial likelihood that requirements for reunification such as AODA treatment, counseling, and other similar treatments may not be available on the timeframe necessary to comply with court ordered conditions for a CHIPS order. Further, current law puts the burden of coordinating services on the child welfare agency, and the parent needs to cooperate with the services. It is a fundamental shift to require the parent to find their own services, rather than requiring the child welfare agency to make reasonable efforts at reunification. Putting aside the possible conflict with federal law, this provision puts prisoners, who are not generally free to avail themselves of outside services due to security concerns and monetary constraints, in the position where they will assuredly lose their parental rights if a particular service is not provided in a prison. Perhaps this is not an issue for some prisoners with lengthy sentences who would be unable to assume parenting responsibilities, but for the multitude of people incarcerated for short times, given the fast progress of child welfare cases as required by AFSA, this puts those people in an untenable position. Finally, given the high rate of minority confinement, this provision will have a disproportionately devastating impact on fathers of color.

3. *Prior Involuntary TPR to Another Child*

The proposed language would widen the net of TPR proceedings considerably. It could be argued that any subsequent child of a parent who has had an involuntary TPR to another child would be subject to this provision. Undoubtedly, parents who have had a previous TPR are known to the child welfare agencies, who take the precautions necessary to ensure the safety of other children. However, the child welfare system is based on the fundamental assumption that parents should be given the opportunity to parent their children unless they have created an unsafe environment which warrants government oversight. Without some evidence of abuse or neglect, a parent should have the opportunity to parent a child without having to immediately defend against a termination of parental rights proceeding. If there are ongoing problems in the home, the child welfare agency should be able to bring a new CHIPS petition and follow the process, giving the parents the same procedural due process given to all parents in this serious circumstance.

4. *Penalty for False Statement in TPR Proceedings*

A good cause exception for domestic abuse must be added to this provision to ensure the safety of mothers and children still in the home. While it is indisputable that accurate information from a mother is the easiest and most reliable way to find a potential father, it is also beyond dispute that in some instances the release of that information will lead to violence against women. The best way to ensure accurate information and protect women and children is to allow for an exception based on domestic abuse to both the false statement penalties and to the requirement to divulge potential fathers generally.

5. *Foster Parent Provisions*

Foster parents are an essential component of the child welfare system. Also essential is the current division of decision-making in child welfare system. An already confusing process for kids need not be complicated by injecting a whole new set of decision makers into the process. It is unclear how this provision would produce better outcomes for children, and in fact it might be more difficult for the county social workers to make the critical decisions regarding placements if foster parents are able to challenge them directly on placement decisions.



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