

**2013 DRAFTING REQUEST**

**Bill**

Received: 8/9/2013 Received By: gmalaise  
Wanted: As time permits Same as LRB:  
For: Mary Lazich (608) 266-5400 By/Representing: Tom Lyon  
May Contact: Drafter: gmalaise  
Subject: Children - TPR and adoption Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Lazich@legis.wisconsin.gov  
Carbon copy (CC) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Termination of parental rights, waiver of right to counsel for failure to appear without just cause

---

**Instructions:**

Redraft 11-4288

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 8/9/2013	scalvin 8/15/2013	rschluet 8/15/2013	_____			
/P1	gmalaise 10/4/2013			_____	mbarman 8/15/2013		
/1	gmalaise 12/10/2013	scalvin 10/4/2013	jfrantze 10/4/2013	_____	lparisi 10/4/2013	lparisi 10/4/2013	
/2		scalvin	rschluet	_____	mbarman	mbarman	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		12/16/2013	12/16/2013	_____	12/16/2013	12/16/2013	

FE Sent For:

↪ Not Needed

<END>

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/P1	gmalaise 10/4/2013			_____	mbarman 8/15/2013		
/1		scalvin 10/4/2013	jfrantze 10/4/2013	_____	lparisi 10/4/2013	lparisi 10/4/2013	
FE Sent For:		1/2 sac 12/16/2013	1/2 sac 12/16/2013				

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/P1	gmalaise 10/4/2013			_____	mbarman 8/15/2013		
/1		scalvin 10/4/2013	jfrantze 10/4/2013	_____	lparisi 10/4/2013		

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/?	gmalaise 8/9/2013	scalvin 8/15/2013	rschlue 8/15/2013	_____			
/P1		1 sac 10/04/2013	Jb	10/4 _____	mbarman 8/15/2013		

FE Sent For:

<END>

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/?	gmalaise	1P1 sac 08/15/2013		_____	_____		

FE Sent For:

<END>

# "RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: GMM) (Date: 8 / 9 / 13)

## Note:

**BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"**

*(exception: companion bills)*



Please transfer the drafting file for

**2011 LRB** -4288 (For: Rep./Sen. Lazich)

to the drafting file for

**2013 LRB** -2901 (For: Rep./Sen. Lazich)

----- **OR** -----



Please copy the drafting file for

**2013 LRB** \_\_\_\_\_ (include the version) (For: Rep./Sen. \_\_\_\_\_)

and place it in the drafting file for

**2013 LRB** \_\_\_\_\_ (For: Rep./Sen. \_\_\_\_\_)



Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: \_\_\_\_\_



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-428871

GMM:sac:rs

2901/p1

EM 8/9  
500

3

Stays

2011 BILL

LPS: Check for hidden notes and delete any found.

1 AN ACT *to renumber and amend* 48.23 (2); and *to create* 48.23 (2) (b) 2. and  
2 48.23 (2) (b) 3. of the statutes; **relating to:** waiver of a parent's right to counsel  
3 in a contested adoption or an involuntary termination of parental rights  
4 proceeding for failure to personally appear as ordered by the juvenile court  
5 without just cause.

***Analysis by the Legislative Reference Bureau***

Under current law, in a proceeding involving a contested adoption or an involuntary termination of parental rights (TPR), a parent who appears before the court assigned to exercise jurisdiction under the Children's Code (juvenile court) must be represented by counsel, except that a parent 18 years of age or over may waive counsel if the juvenile court is satisfied that the waiver is knowingly and voluntarily made. Current law, however, does not permit a parent under 18 years of age to waive counsel in a contested adoption or involuntary TPR proceeding.

This bill provides that a parent of any age who has appeared before the juvenile court in a contested adoption or involuntary TPR proceeding is considered to have waived his or her right to counsel and to appear by counsel in the proceeding if the juvenile court has ordered the parent to appear in person at any or all subsequent hearings in the proceeding and the parent fails to appear in person as ordered

**BILL**

*SEC AM 48.23 (2) (M)*

*48.23 (2) (M) (2) RIGHT OF PARENTS PARENT TO*

without just cause. The bill also provides that repeated failure by a parent to appear *COUNSEL* in person as ordered by the juvenile court is presumed to be without just cause.

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

1           SECTION 1. 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended  
2 to read:

3           48.23 (2) ~~RIGHT OF PARENT TO COUNSEL~~ (a) Whenever a child is the subject of  
4 ~~a proceeding involving a contested adoption or the involuntary termination of~~  
5 ~~parental rights, any parent under 18 years of age who appears before the court shall~~  
6 ~~be represented by counsel; but no such parent may waive counsel. Except as~~  
7 ~~provided in sub. (2g), a minor parent petitioning for the a voluntary termination of~~  
8 ~~parental rights shall be represented by a guardian ad litem. If~~

9           (b) In a proceeding ~~involves~~ involving a contested adoption or the an  
10 involuntary termination of parental rights, any parent 18 years old or older who  
11 appears before the court shall be represented by counsel; but the counsel, except as  
12 follows:

13           1. A parent 18 years of age or over may waive counsel provided if the court is  
14 satisfied such that the waiver is knowingly and voluntarily made.

15           SECTION 2. 48.23 (2) (b) 2. of the statutes is created to read:

16           48.23 (2) (b) 2. A parent under 18 years of age may not waive counsel.

17           SECTION 3. 48.23 (2) (b) 3. of the statutes is created to read:

18           48.23 (2) (b) 3. Notwithstanding subds. 1. and 2., a parent is considered to have  
19 waived his or her right to counsel and to appear by counsel if the court has ordered  
20 the parent to appear in person at any or all subsequent hearings in the proceeding  
21 and the parent fails to appear in person as ordered without just cause. Repeated

**BILL**

1 failure by a parent to appear in person as ordered is presumed to be without just  
2 cause.

3 **SECTION 4. Initial applicability.**

4 (1) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. This act first  
5 applies to a parent who on the effective date of this subsection is ordered to appear  
6 in person at a hearing in a contested adoption or an involuntary termination of  
7 parental rights proceeding.

8 (END)

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

-29 21/PJ

10/4

Convert to / 1

Tom Lyon



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2901/PD  
GMM:sac:fs

2/10/14  
Convert to 1/  
Today

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

gen cat

1 **AN ACT** *to renumber and amend* 48.23 (2); *to amend* 48.23 (2) (title); and *to*  
2 *create* 48.23 (2) (b) 2. and 48.23 (2) (b) 3. of the statutes; **relating to:** waiver  
3 of a parent's right to counsel in a contested adoption or an involuntary  
4 termination of parental rights proceeding for failure to personally appear as  
5 ordered by the juvenile court without just cause.

***Analysis by the Legislative Reference Bureau***

Under current law, in a proceeding involving a contested adoption or an involuntary termination of parental rights (TPR), a parent who appears before the court assigned to exercise jurisdiction under the Children's Code (juvenile court) must be represented by counsel, except that a parent 18 years of age or over may waive counsel if the juvenile court is satisfied that the waiver is knowingly and voluntarily made. Current law, however, does not permit a parent under 18 years of age to waive counsel in a contested adoption or involuntary TPR proceeding.

This bill provides that a parent of any age who has appeared before the juvenile court in a contested adoption or involuntary TPR proceeding is considered to have waived his or her right to counsel and to appear by counsel in the proceeding if the juvenile court has ordered the parent to appear in person at any or all subsequent hearings in the proceeding and the parent fails to appear in person as ordered

without just cause. The bill also provides that repeated failure by a parent to appear in person as ordered by the juvenile court is presumed to be without just cause.

---

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

1           **SECTION 1.** 48.23 (2) (title) of the statutes is amended to read:

2           48.23 (2) (title) RIGHT OF PARENTS PARENT TO COUNSEL.

3           **SECTION 2.** 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended  
4 to read:

5           48.23 (2) (a) ~~Whenever a child is the subject of a proceeding involving a~~  
6 ~~contested adoption or the involuntary termination of parental rights, any parent~~  
7 ~~under 18 years of age who appears before the court shall be represented by counsel;~~  
8 ~~but no such parent may waive counsel. Except as provided in sub. (2g), a minor~~  
9 ~~parent petitioning for the a voluntary termination of parental rights shall be~~  
10 ~~represented by a guardian ad litem. If~~

11           (b) In a proceeding involves involving a contested adoption or the an  
12 involuntary termination of parental rights, any parent 18 years old or older who  
13 appears before the court shall be represented by counsel; but the counsel, except as  
14 follows:

15           1. A parent 18 years of age or over may waive counsel provided if the court is  
16 satisfied such that the waiver is knowingly and voluntarily made.

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19           **SECTION 4.** 48.23 (2) (b) 3. of the statutes is created to read:

20           48.23 (2) (b) 3. Notwithstanding subds. 1. and 2., a parent is considered to have  
21 waived his or her right to counsel and to appear by counsel if the court has ordered

1 the parent to appear in person at any or all subsequent hearings in the proceeding  
2 and the parent fails to appear in person as ordered without just cause. Repeated  
3 failure by a parent to appear in person as ordered is presumed to be without just  
4 cause.

5 **SECTION 5. Initial applicability.**

6 (1) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. This act first  
7 applies to a parent who on the effective date of this subsection is ordered to appear  
8 in person at a hearing in a contested adoption or an involuntary termination of  
9 parental rights proceeding.

10

(END)

**Parisi, Lori**

---

**From:** Sen.Lazich  
**Sent:** Friday, October 04, 2013 2:06 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -2901/1 Topic: Termination of parental rights, waiver of right to counsel for failure to appear without just cause

Please Jacket LRB -2901/1 for the SENATE.

## Malaise, Gordon

---

**From:** Lyons, Thomas  
**Sent:** Monday, December 09, 2013 1:47 PM  
**To:** Malaise, Gordon  
**Subject:** LRB 2901/1

Gordon,

With regards to LRB 2901/1, I am asking for a couple of changes.

- 1) P. 2, In 20, replace "considered" with "presumed"
- 2) P. 3, In 2, after "ordered" <sup>in person</sup> strike the rest of that sentence and replace with "and the court finds that the parent's conduct in failing to appear was egregious and without clear and justifiable excuse."
- 3) P. 3, In 2-4, strike the sentence that begins "Repeated..." and replace with "Failure by a parent to appear in person at consecutive hearings as ordered is presumed to be egregious and without clear and justifiable excuse."
- 4) Add a new section after 4 with language that reads "In a proceeding to vacate a default judgment or for reconsideration of a default judgment terminating parental rights, a parent who had waived counsel shall be represented by counsel."

Thank you,

Tom Lyons  
Office of State Senator Mary Lazich  
28<sup>th</sup> Senate District



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2901/1  
GMM:sac:ff  
RNR

EN 12/10  
Soon

2013 BILL

gen cost

1 AN ACT *to renumber and amend* 48.23 (2); *to amend* 48.23 (2) (title); and *to*  
2 *create* 48.23 (2) (b) 2. and 48.23 (2) (b) 3. of the statutes; **relating to:** waiver  
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4 termination of parental rights proceeding for failure to personally appear as  
5 ordered by the juvenile court ~~without just cause.~~

**Analysis by the Legislative Reference Bureau**

Under current law, in a proceeding involving a contested adoption or an involuntary termination of parental rights (TPR), a parent who appears before the court assigned to exercise jurisdiction under the Children's Code (juvenile court) must be represented by counsel, except that a parent 18 years of age or over may waive counsel if the juvenile court is satisfied that the waiver is knowingly and voluntarily made. Current law, however, does not permit a parent under 18 years of age to waive counsel in a contested adoption or involuntary TPR proceeding.

presumed  
presumed

This bill provides that a parent of any age who has appeared before the juvenile court in a contested adoption or involuntary TPR proceeding is ~~considered~~ to have waived his or her right to counsel and to appear by counsel in the proceeding if the juvenile court has ordered the parent to appear in person at any or all subsequent hearings in the proceeding ~~and~~ the parent fails to appear in person as ordered

\*  
\*

)

**BILL**

Insert  
A

~~without just cause. The bill also provides that repeated failure by a parent to appear in person as ordered by the juvenile court is presumed to be without just cause.~~

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

1           SECTION 1. 48.23<sup>x</sup> (2) (title) of the statutes is amended to read:

2           48.23 (2) (title) RIGHT OF PARENTS PARENT TO COUNSEL.

3           SECTION 2. 48.23<sup>x</sup> (2) of the statutes is renumbered 48.23 (2) (a) and amended  
4 to read:

5           48.23 (2) (a) ~~Whenever a child is the subject of a proceeding involving a~~  
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20           48.23 (2) (b) 3. Notwithstanding subds. 1. and 2., a parent is ~~considered~~ to have  
21 waived his or her right to counsel and to appear by counsel if the court has ordered

presumed  
presumed.

**BILL**

Insert  
3-4

1  
2  
3  
4  
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the parent to appear in person at any or all subsequent hearings in the proceeding  
~~and the parent fails to appear in person as ordered without just cause. Repeated  
failure by a parent to appear in person as ordered is presumed to be without just  
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**SECTION 5. Initial applicability.**

(1) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. This act first  
applies to a parent who on the effective date of this subsection is ordered to appear  
in person at a hearing in a contested adoption or an involuntary termination of  
parental rights proceeding.

(END)

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2901/2ins  
GMM.....

(INSERT 3-4)

1           , and the court finds that the parent's conduct in failing to appear in person was  
2 egregious and without clear and justifiable excuse. Failure by a parent to appear in  
3 person at consecutive hearings as ordered is presumed to be conduct that is egregious  
4 and without clear and justifiable excuse.

5           **SECTION** <sup>off</sup> ~~1.~~ 48.23 (2) (c) of the statutes is created to read:

6           48.23 (2) (c) In a proceeding to vacate or reconsider a default judgment  
7 involuntarily terminating parental rights, a parent who has waived counsel under  
8 par. (b) 1. or who is presumed to have waived counsel under par. (b) 3. shall be  
9 represented by counsel.

(END OF INSERT)

(INSERT A)

<sup>off</sup> , and the court finds that the parent's conduct in failing to appear in person was  
egregious and without clear and justifiable excuse. Under the bill, failure by a parent  
to appear in person at consecutive hearings as ordered is presumed to be conduct that  
is egregious and without clear and justifiable excuse. The bill, however, requires a  
parent who has waived counsel or who is presumed to have waived counsel to be  
represented by counsel in a proceeding to vacate or reconsider a default judgment  
involuntarily terminating parental rights.

(END OF INSERT)

**Barman, Mike**

---

**From:** Sen.Lazich  
**Sent:** Monday, December 16, 2013 12:51 PM  
**To:** Barman, Mike  
**Cc:** Lyons, Thomas  
**Subject:** Bill Jacket Return Requested

Mike,

I have the bill jacket. It is on the way back to you.

Thank you

Tricia

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**From:** Barman, Mike  
**Sent:** Monday, December 16, 2013 12:43 PM  
**To:** Sen.Lazich  
**Cc:** Lyons, Thomas  
**Subject:** Bill Jacket Return Requested

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We completed the re-draft of LRB-2901 ... it is now a "/2".

We need the bill jacket returned from the "/1" version before we can send you the "/2". As soon as we receive the bill jacket we will turn around and send you out the new (jacketed) version.

If you are unable to locate it please contact the drafting attorney (GMM 266-9738) ... he will need to re-draft it with a new LRB number.

Please contact us if you have any questions.

Thanks,

Mike Barman (Lead Program Assistant)  
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office  
1 East Main Street, Suite 200, Madison, WI 53703  
(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

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