



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2015 Assembly Bill 528**

**Assembly Substitute  
Amendment 1**

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### CURRENT LAW

Generally, in order for a parent to voluntarily terminate his or her parental rights, the parent must appear personally in court. Before accepting a parent's consent to termination of parental rights, the judge must explain the effect of termination of parental rights and must question the parent so as to be satisfied that the consent is informed and voluntary.

### 2015 ASSEMBLY BILL 528

Assembly Bill 528 (AB 528) provides an alternative procedure for the voluntary termination of parental rights. Under AB 528, in adoption cases negotiated or arranged by private licensed child welfare agencies, a parent may consent to termination of parental rights by filing an affidavit of disclaimer of parental rights with a court. The disclaimer must be witnessed by two people, notarized, and must contain specific information.

Birth parents must wait at least 72 hours after the birth of a child to execute a disclaimer, except that a birth father may execute a disclaimer before a child's birth. A birth mother may not execute a disclaimer before a child's birth. If a birth father executes a disclaimer before a child's birth, the disclaimer is revocable for 72 hours after a child's birth. To revoke a disclaimer, a father must sign a statement of revocation that is witnessed by two people, notarized, and filed with the court within 72 hours after the birth of the child.

A disclaimer is irrevocable if executed 72 hours or more after a child's birth, unless it was obtained by fraud or duress. A claim of fraud or duress to invalidate a disclaimer must be brought within six months after the disclaimer's execution. A disclaimer is not revocable on the basis that the parent was a minor, and a disclaimer may not contain terms for an open adoption

as a condition of the disclaimer. A parent must be provided with a copy of the affidavit of disclaimer of parental rights at the time of signature.

### **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 (ASA 1) permits a parent to consent to a termination of his or her parental rights by disclaimer in any case, not just adoption cases negotiated or arranged by a private licensed child welfare agency, unless the case involves an Indian child. ASA 1 explicitly provides that a parent seeking to voluntarily terminate his or her parental rights to an Indian child may not do so by filing an affidavit of disclaimer of parental rights. Further, under ASA 1, only adult parents, not minor parents, may voluntarily terminate their parental rights by disclaimer. The disclaimer must be witnessed by two people, notarized, and must contain specific information, including a statement that the child is not an Indian child. A disclaimer may not contain terms for an open adoption as a condition of the disclaimer, and a parent must be provided with a copy of the disclaimer at the time of signature.

Under ASA 1, as under AB 528, birth parents must wait at least 72 hours after the birth of a child to execute a disclaimer, except that a birth father may execute a disclaimer before a child's birth. A birth mother may not execute a disclaimer before a child's birth. If a birth father executes a disclaimer before a child's birth, the disclaimer is revocable for 72 hours after a child's birth. To revoke a disclaimer, a father must sign a statement of revocation that is witnessed by two people, notarized, and filed with the court within 72 hours after the birth of the child.

ASA 1 requires that an action to invalidate a disclaimer of parental rights be brought within six months after the date of execution unless the disclaimer involved the parental rights to an Indian child or the petition to terminate parental rights is granted. If the disclaimer involved the parental rights to an Indian child, withdrawal of consent or invalidation of a subsequent adoption must be permitted as allowed under current law. If the termination of parental rights petition is granted, an action to invalidate the disclaimer must be brought within the timeframe permitted under current law for the filing of a motion for relief from judgment.

Finally, under ASA 1, a person who voluntarily consents to termination of his or her parental rights in writing, as permitted under current law and under AB 528, is explicitly exempt from any requirement to attend the termination of parental rights hearing.

### **BILL HISTORY**

ASA 1 was offered by Representative Jacque. On February 2, 2016, the Assembly Committee on Family Law recommended adoption of ASA 1 on a vote of Ayes, 8; Noes, 0, and passage of AB 528, as amended, on a vote of Ayes, 5; Noes, 3.

RES:ksm