



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2005 Assembly Bill 521</b>	<b>Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1</b>
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### *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