



2013 SENATE BILL 504

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., 48.23 (2) (b) 3. and 48.23 (2) (c) of the statutes; **relating**
3 **to:** waiver of a parent's right to counsel in a contested adoption or an
4 involuntary termination of parental rights proceeding for failure to personally
5 appear as ordered by the juvenile court.

Analysis by the Legislative Reference Bureau

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

6 **SECTION 1.** 48.23 (2) (title) of the statutes is amended to read:
7 48.23 (2) (title) RIGHT OF PARENTS PARENT TO COUNSEL.
8 **SECTION 2.** 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended
9 to read:
10 48.23 (2) (a) ~~Whenever a child is the subject of a proceeding involving a~~
11 ~~contested adoption or the involuntary termination of parental rights, any parent~~

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1 ~~under 18 years of age who appears before the court shall be represented by counsel;~~
2 ~~but no such parent may waive counsel.~~ Except as provided in sub. (2g), a minor
3 parent petitioning for the a voluntary termination of parental rights shall be
4 represented by a guardian ad litem. If

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

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

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

12 48.23 (2) (b) 2. A parent under 18 years of age may not waive counsel.

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

14 48.23 (2) (b) 3. Notwithstanding subd. 1., a parent 18 years of age or over is
15 presumed to have waived his or her right to counsel and to appear by counsel if the
16 court has ordered the parent to appear in person at any or all subsequent hearings
17 in the proceeding, the parent fails to appear in person as ordered, and the court finds
18 that the parent's conduct in failing to appear in person was egregious and without
19 clear and justifiable excuse. Failure by a parent 18 years of age or over to appear in
20 person at consecutive hearings as ordered is presumed to be conduct that is egregious
21 and without clear and justifiable excuse. If the court finds that a parent's conduct
22 in failing to appear in person as ordered was egregious and without clear and
23 justifiable excuse, the court may not hold a dispositional hearing on the contested
24 adoption or involuntary termination of parental rights until at least 2 days have
25 elapsed since the date of that finding.

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1 **SECTION 5.** 48.23 (2) (c) of the statutes is created to read:

2 48.23 (2) (c) In a proceeding to vacate or reconsider a default judgment granted
3 in an involuntary termination of parental rights proceeding, a parent who has
4 waived counsel under par. (b) 1. or who is presumed to have waived counsel under
5 par. (b) 3. in the involuntary termination of parental rights proceeding shall be
6 represented by counsel, unless in the proceeding to vacate or reconsider the default
7 judgment the parent waives counsel as provided in par. (b) 1. or is presumed to have
8 waived counsel as provided in par. (b) 3.

9 **SECTION 5g.** 48.23 (4m) of the statutes is created to read:

10 48.23 (4m) DISCHARGE OF COUNSEL. In any situation under this section in which
11 counsel is knowingly and voluntarily waived or in which a parent is presumed to
12 have waived his or her right to counsel, the court may discharge counsel.

13 **SECTION 5m.** 48.424 (4) (intro.) of the statutes is amended to read:

14 48.424 (4) (intro.) If grounds for the termination of parental rights are found
15 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
16 not preclude a dismissal of a petition under s. 48.427 (2). The Except as provided in
17 s. 48.23 (2) (b) 3., the court shall then proceed immediately to hear evidence and
18 motions related to the dispositions enumerated in s. 48.427. Except as provided in
19 s. 48.42 (2g) (ag), the court may delay making the disposition and set a date for a
20 dispositional hearing no later than 45 days after the fact-finding hearing if any of
21 the following apply:

22 **SECTION 6. Initial applicability.**

23 (1) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. This act first
24 applies to a parent who on the effective date of this subsection is ordered to appear

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SECTION 6

1 in person at a hearing in a contested adoption or an involuntary termination of
2 parental rights proceeding.

3 (END)