

2013 Senate Bill 504 (LRB -2901)

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

2014

- 01-21. S. Introduced by Senator **Lazich**; cosponsored by Representatives **Strachota, Kooyenga, Tauchen** and **Thiesfeldt** ..... 585
- 01-21. S. Read first time and referred to Committee on Judiciary and Labor ..... 585
- 01-30. S. Public hearing held
- 02-12. S. Senate Amendment 1 offered by Senator Harris (**LRB a1772**) ..... 657
- 02-13. S. Senate Amendment 2 offered by Senator Lazich (**LRB a1793**) ..... 662
- 02-13. S. Senate Amendment 3 offered by Senator Harris (**LRB a1797**) ..... 662
- 02-14. S. Executive action taken
- 02-14. S. Report adoption of Senate Amendment 2 recommended by Committee on Judiciary and Labor, Ayes 4, Noes 0 ..... 670
- 02-14. S. Report passage as amended recommended by Committee on Judiciary and Labor, Ayes 3, Noes 1 ..... 670
- 02-14. S. Available for scheduling
- 02-17. S. Senate Amendment 4 offered by Senators Harris and Risser (**LRB a1840**) ..... 673
- 02-17. S. Placed on calendar 2-18-2014 pursuant to Senate Rule 18(1) ..... 674
- 02-18. S. Read a second time ..... 684
- 02-18. S. Senate Amendment 2 **adopted** ..... 684
- 02-18. S. Senate Amendment 4 **adopted** ..... 684
- 02-18. S. Ordered to a third reading ..... 684
- 02-18. S. Rules suspended ..... 684
- 02-18. S. Read a third time and **passed** ..... 684
- 02-18. S. Ordered immediately messaged ..... 684
- 02-18. A. Received from Senate ..... 672
- 02-20. A. Read first time and referred to committee on Rules ..... 682
- 03-12. A. Placed on calendar 3-18-2014 by Committee on Rules
- 03-18. A. Read a second time
- 03-18. A. Ordered to a third reading
- 03-18. A. Rules suspended
- 03-18. A. Read a third time and **concurred in**, Ayes 57, Noes 38
- 03-18. A. Ordered immediately messaged
- 03-19. S. Received from Assembly concurred in

SB

2013

ENROLLED BILL

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ADOPTED DOCUMENTS:

Orig     Engr         SubAmdt     

13-29011Z

Amendments to above (if none, write "NONE"): SA2 - a 1793/1  
SA4 - a 1840/1

Corrections - show date (if none, write "NONE"): None

Topic Rel

3-26-14      *Phillips*  
Date                      Enrolling Drafter



## 2013 SENATE BILL 504

January 21, 2014 – Introduced by Senator LAZICH, cosponsored by Representatives STRACHOTA, KOYENGA, TAUCHEN and THIESFELDT. Referred to Committee on Judiciary and Labor.

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.**

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### ***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 presumed 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, the parent fails to appear in person as ordered, 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

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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.

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*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~~ if the court is  
16 ~~satisfied such that the~~ waiver is knowingly and voluntarily made.

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

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

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

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INS. SA 2-1

1 48.23 (2) (b) 3. Notwithstanding subds. 1. and 2., a parent is presumed to have  
 2 waived his or her right to counsel and to appear by counsel if the court has ordered  
 3 the parent to appear in person at any or all subsequent hearings in the proceeding,  
 4 the parent fails to appear in person as ordered, and the court finds that the parent's  
 5 conduct in failing to appear in person was egregious and without clear and justifiable  
 6 excuse. Failure by a parent to appear in person at consecutive hearings as ordered  
 7 is presumed to be conduct that is egregious and without clear and justifiable excuse.

INS. SA 2-2

INS. SA 4-1

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

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

INS. SA 4-2

SECTION 6. Initial applicability.

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

(END)

INS. SA 2-3



**SENATE AMENDMENT 2,  
TO SENATE BILL 504**

February 13, 2014 - Offered by Senator LAZICH.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 1: delete "subds. 1. and 2., a parent" and substitute "subd. 1.,  
3 a parent 18 years of age or over".

SA2-1

4 **2.** Page 3, line 6: after "parent" insert "18 years of age or over".

SA2-2

5 **3.** Page 3, line 9: delete lines 9 to 12 and substitute:

SA2-3

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

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





**SENATE AMENDMENT 4,  
TO SENATE BILL 504**

February 17, 2014 - Offered by Senators HARRIS and RISSER.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 7: after "excuse." insert "If the court finds that a parent's  
3 conduct in failing to appear in person as ordered was egregious and without clear and  
4 justifiable excuse, the court may not hold a dispositional hearing on the contested  
5 adoption or involuntary termination of parental rights until at least 2 days have  
6 elapsed since the date of that finding".

SA4-1

7 **2.** Page 3, line 12: after that line insert:

8 **SECTION 5m.** 48.424 (4) (intro.) of the statutes is amended to read:  
9 48.424 (4) (intro.) If grounds for the termination of parental rights are found  
10 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall  
11 not preclude a dismissal of a petition under s. 48.427 (2). The Except as provided in  
12 s. 48.23 (2) (b) 3., the court shall then proceed immediately to hear evidence and  
13 motions related to the dispositions enumerated in s. 48.427. Except as provided in

SA4-2



1 s. 48.42 (2g) (ag), the court may delay making the disposition and set a date for a  
2 dispositional hearing no later than 45 days after the fact-finding hearing if any of  
3 the following apply<sup>3</sup>.

4

(END)