
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: April 1, 2021

Contact: Amber Otis, Staff Attorney

2021 Assembly Bill 138

Assembly Amendment 1

2021 ASSEMBLY BILL 138

Assembly Bill 138 creates a new procedure for a mother, father, or presumed or alleged father to voluntarily consent to a termination of parental rights (TPR) by filing an affidavit of disclaimer of parental rights with the court. The bill also authorizes adoptive parents to provide payments to birth parents for adoption services provided by private, child-placing agencies licensed in another state.

Affidavit Disclaiming Parental Rights

Current law generally requires a parent to attend a court hearing to voluntarily consent to the TPR, subject to certain limited exceptions. Assembly Bill 138 creates a new method by which a mother, father, or alleged or presumed father may, by signing a written affidavit filed with the court, consent to the termination of his or her parental rights that he or she may have with respect to a child under one year of age and who he or she knows is not, or has no reason to know is, an Indian child. The affidavit must be signed by two witnesses, one of whom must be chosen by the person disclaiming parental rights. Both witnesses must certify to certain statements, including a statement of neutrality and a lack of professional or fiduciary interest in the disclaimer or the child's adoption. In addition, the affidavit must be notarized and contain certain information specified in the bill.

In addition, the bill requires that the agency placing the child for adoption must offer counseling to a mother, father, or presumed or alleged father prior to executing the affidavit. A minor may consent to TPR using the disclaimer affidavit, but only after: (1) the TPR petition has been filed; (2) the agency has offered the minor legal counseling; (3) the minor has been appointed a guardian ad litem (GAL); and (4) the appointed GAL approves the disclaimer.

Under the bill, the disclaimer affidavit must contain a statement that the person voluntarily disclaims any rights to the child, including the right to notice of any TPR or adoption proceedings. The affidavit may contain a guardianship nomination, if a guardian for a child in need of protection or services (CHIPS) has not been appointed. The affidavit may not contain terms for post-termination contact between the child and the person disclaiming parental rights as a condition of the disclaimer. The bill specifies other required content in the affidavit, along with a sample form statement.

The bill sets forth specific timelines governing the execution and revocability of the disclaimer affidavit. If the affidavit is executed after a child's birth, such execution may not occur until at least 120 hours after the child's birth, but before the child's first birthday. A father, or alleged or presumed father, may execute the affidavit before the child's birth, but a mother may not. If executed by a father or alleged or presumed father before the child's birth, the affidavit is revocable for any reason until 24 hours after execution or 120 hours after the child's birth, whichever is later. If executed by the mother, the affidavit is revocable for any reason until 24 hours after execution.

To revoke an affidavit, the person revoking the affidavit must sign a notarized statement and file a copy with the clerk of court. Once the applicable period for revoking an affidavit has lapsed, the affidavit is irrevocable, unless obtained by fraud or duress. However, an action to invalidate the affidavit, including

an action based on fraud or duress, may be filed within three months after the date on which the affidavit was executed, except as provided under the Wisconsin Indian Child Welfare Act (WICWA).

The bill specifies that a parent, or alleged or presumed father, who consented to the TPR using the disclaimer affidavit procedure is not required to attend the final hearing on adoption. However, if parental rights are terminated based on a disclaimer affidavit, the court may not enter an adoption order until three months have passed since the date on which the affidavit was executed.

Payments to Birth Parents

Current law generally prohibits payments by adoptive parents to birth parents in connection with an adoption, but for a list of specified types of authorized payments, including those for the actual cost of services in connection with the adoption provided by a child welfare agency licensed in Wisconsin. The bill expands the list of authorized payments to also allow payments for services provided in connection with an adoption by a private child-placing agency that is licensed in the state in which it operates, and, where applicable, in compliance with the federal Indian Child Welfare Act (ICWA).

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 modifies the bill, as follows:

- Specifies that a court may not proceed to the dispositional phase of a TPR proceeding until after a disclaimer affidavit becomes irrevocable, rather than proceeding immediately as authorized under current law for other forms of voluntary consent.
- Expands the time in which a disclaimer affidavit may be revoked for any reason after the affidavit's execution, from 24 to 72 hours.
- Clarifies that the bill's time period for revoking an affidavit, when executed by a father, or alleged or presumed father, applies whether the affidavit is executed before or after the child's birth.
- Requires a disclaimer affidavit to include the date and time that it was executed.
- Requires the court to review a disclaimer affidavit and make findings on the record stating whether the affidavit meets the specified requirements.
- Clarifies that the person who files a TPR action is not required to have the TPR summons and petition served upon a parent, or presumed or alleged father, who has waived the right to notice using the disclaimer affidavit method.
- Allows the disclaimer affidavit to nominate a guardian if neither a CHIPS guardian nor a private guardian of the child's person has been appointed.
- Requires compliance with WICWA and ICWA, and related federal regulations, by: (1) providing that the disclaimer affidavit may be used only if no participant in the court proceeding knows or has reason to know the child is an Indian child, and further requiring the court to make findings to that effect; (2) requiring that the disclaimer affidavit include a statement of whether there is, or is not, any reason to believe the child is an Indian child; and (3) specifying that a disclaimer affidavit is not effective if it would violate WICWA or ICWA, or any related regulations.

BILL HISTORY

Representative Brandtjen offered Assembly Amendment 1 on March 25, 2021. On March 31, 2021, the Assembly Committee on Children and Families recommended adoption of Assembly Amendment 1 on a vote of Ayes, 12; Noes, 0; and passage of Assembly Bill 138, as amended, on a vote of Ayes, 8; Noes, 4.

AO:jal