



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 293
[2005 Assembly Bill 521]

**Termination of Parental Rights and
Adoption**

2005 Wisconsin Act 293, relating to termination of parental rights (TPR) and adoption, does all of the following:

- Modifies statutes 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 prior law, this ground could be used only for a child who had been adjudged CHIPS because he or she had been abandoned, abused, or neglected. The Act 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.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- ***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 Act 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 or a notice of intent to 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.

Effective Date: The Act took effect on April 21, 2006, except that the provisions relating to declarations of paternal interest take effect on July 1, 2006, and the provisions relating to pre-adoption preparation for first-time adoptive parents take effect on April 1, 2007.

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