



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 296
[2005 Assembly Bill 660]

Legal Custody of Relinquished Child After Termination of Parental Rights

Current law specifies that a law enforcement officer, emergency medical technician, or hospital staff member may take into custody a child who is 72 hours old or younger under circumstances in which the child's parent: (1) relinquished custody of the child to the officer, technician, or staff member; and (2) did not express an intent to return for the child. Current law also:

1. Permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to grant an involuntary termination of parental rights (TPR) to a child who was taken into custody under those circumstances.
2. Permits, if the parental rights of all living parents of a child are terminated or if a child has no living parents, the juvenile court to transfer guardianship of the child to the Department of Health and Family Services (DHFS), which is then responsible for securing the adoption of the child.
3. Specifies that if a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS *may petition the juvenile court to transfer legal custody* of such a child to a county department of human services or social services (county department), and the juvenile court must transfer the child's legal custody to the county department specified in the petition.

2005 Wisconsin Act 296 prohibits DHFS from petitioning the juvenile court to transfer to a county department legal custody of a child who was initially taken into custody under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

Current law similarly provides that an *American Indian tribal court* in this state may appoint DHFS as the guardian or legal custodian of a child who has no parents, or whose parents' parental rights to the child have been terminated by the tribal court, for the purpose of making an adoptive placement for the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the tribal court to transfer legal custody or guardianship back to the tribe.

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/>.

Act 296 prohibits DHFS from petitioning a tribal court to transfer back to a tribe legal custody or guardianship of a child who was initially taken into custody under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

Effective Date: 2005 Wisconsin Act 296 took effect on April 21, 2006. The Act first applies to petitions filed under these provisions on that date.

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