



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.

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

SENATE BILL 504

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.

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~~ 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:

SENATE BILL 504

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.

8 **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.

13 **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.

18 (END)