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TO: Rep. Sue Jeskewitz
Sen. Jeff Plale
Co-Chairs
Legislative Council Special Committee on Adoption and Parental Law

FROM: Bob Andersen

RE: ***Concerns we have with Two Proposals:***

[1] ***WLC: 0015/1 to Change Grounds for TPR for Failure to Assume Parental Responsibility from the Parent's Never Having Had a Substantial Parental Relationship to Not Having a Substantial Parental Relationship At the Time of the Filing of the Petition***; and

[2] ***Memo No. 7, Summary of the October 4, 2004 Meeting of the Birth Father Registry Working Group***

DATE: December 3, 2004

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing). As a result, our organization has been extensively involved in family law issues over the years.

We are concerned about the proposals that are involved in WLC: 0015/1, relating to involuntary termination of parental rights based upon failure to assume parental responsibility, which is scheduled for committee action at the next meeting and Memo No. 7, Summary of the October 4, 2004 Meeting of the Birth Father Registry Working Group.

Below is a brief analysis of our concerns.

1. **Proposal in WLC: 0015/1 to Change Grounds for TPR for *Failure to Assume Parental Responsibility* from the Parent's *Never* Having Had a Substantial Parental Relationship to Not Having a Substantial Parental Relationship *At the Time of the Filing of the Petition***

The proposal is to change current law regarding failure to ***ASSUME*** responsibility to apply to circumstances where there is no assumption of parental responsibility ***at the time*** of the filing of the petition [an alternative has been suggested that it be during the 6 months before the filing], for reason that it is nearly impossible to show that the person ***never had*** assumed responsibility [I have highlighted the word ***ASSUME***, because it reveals what this statute is all about.]

This is a proposal that seems simple on its face, but it is one which has not been well thought out, and it is one which will have a profound effect on the termination of parental rights. It is a proposal that misunderstands the reason the grounds for termination for failure to assume responsibility is in the statutes.

The enactment of this statute would make a major change in the law for the termination of parental rights. It will make a huge mass of parents liable for the termination of parental rights who are not liable now. Currently, in general, a parent's rights can be terminated by showing that the parent (1) never established a substantial relationship in the first place; (2) did have a substantial relationship at one time, but subsequently abandoned the child ***by not having had any contact with the child over a period of time***; or (3) was engaged in neglect or abuse that invoked the Children's Court jurisdiction and the parent never rehabilitated himself or herself.

This proposal says that parental rights can be terminated if ***at the time of the filing of the petition*** [or six months before the filing, as an alternative has suggested] the parent has not been able to assume "***substantial parental responsibility***," which is defined by s. 48.415 (6)(b) as ***"the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child."***

What this does is to change the concept from one requiring a parent to maintain communication or contact with a child to one requiring the parent ***"to accept and exercise significant responsibility for the daily supervision, education, and protection and care of the child."*** Many, many, non custodial parents do not even have the right to accept and exercise significant responsibility for the daily supervision, education, and protection of their children.

The enactment of this legislation would inadvertently result in a huge distortion of the basic concepts underlying the termination of parental rights.
Furthermore, unlike the grounds for abandonment, where a parent is allowed to show some good cause for not having been in contact with the child-- like incarceration or

illness, under s. 48.415 (1) © 1., 2., and 3., under this proposal, there is no good cause exception for a parent who is not now (or in the recent past) maintained ***"the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child."***

This proposal confuses two entirely separate concepts, for the termination of parental rights: (1) the grounds for termination because a parent ***never acquired a parental right in the first place***; and (2) a parent has abandoned a child. It is like comparing apples to oranges.

The ***title*** of the grounds for termination – ***Failure to Assume Parental Responsibility***, under s. 48.415 (6), by itself, reveals the misunderstanding that is taking place here. This is a failure to ***assume*** parental responsibility in the first place. It is not a failure to ***continue responsibility*** (which is a failure that is addressed under the abandonment and CHIPS provisions that appear later in the statute). This grounds for TPR – for failure to ***assume*** responsibility – is in keeping with the U.S. Supreme Court decision, Lehr v. Robertson, 463 U.S. 248, 77 L Ed 2d 614, 103 S. Ct. 2985 (1983) and the Wisconsin Supreme Court decision, In the Matter of Sueann A.M. 176 Wis 2d 673, 500 N.W. 2d 649 (1993), which held that a father who never assumed parental responsibility ***never acquired*** a constitutionally protected right as a parent. Both these cases went on to say that, because the men never acquired such a right they were not entitled to notice of the termination of their parental rights. Consequently, current law provides that the right of a putative father (I suppose it could apply to the mother – although that is doubtful – but it really was intended to apply to a putative father) can easily be terminated where he ***never assumed any responsibility in the first place.***

Wisconsin's provision for terminating parental rights for failure to assume parental responsibility [attached] was enacted in May of 1980. The Lehr decision referred to above was decided in 1983. They both advanced the same grounds for termination. It is reasonable to conclude that the theory that was being developed in the Lehr case litigation, which case had been in the courts for years before 1983, was also being promoted to legislatures across the land and was successfully enacted in Wisconsin. The theory is that, if an unmarried man ***never*** had a significant relationship with the child in the first place, he had no parental right to protect.

That is why the current statute, going back to 1980, has always said that parental rights will be terminated (or never recognized – same thing) if the parent ***NEVER*** had a significant relationship with the child in the first place. The law was confirmed by the Wisconsin Supreme Court in In the Matter of Sueann A.M. 176 Wis 2d 673, 500 N.W. 2d 649 (1993).

This is different from the other grounds for termination [abandonment, under s. 48.415 (1) – which has always been a major grounds for termination] which is that, although the

parent had assumed responsibility at one time or another, the parent has since ***abandoned*** the child.

The problems with changing this law, as proposed, are several:

[1] it will effectively repeal the need for the separate section in the statutes on abandonment, because the proposed change in the law actually relates to abandonment and because it is much easier to show that the parent does not have a ***substantial parental involvement*** (at the time of the filing of the petition or within 6 months before the filing), than it is to show that the parent has not had ***any visitation or communication at all with the child***, as is required under s. 48.415 (1)(a)3., or that the ***parent had no good cause for not visiting with the child***, as is required under s. 48.415 (1)©, relating to abandonment. The requirement that the parent have a substantial parental involvement places a much higher standard on the parent to show significant responsibility on a ***daily basis***, under 48.415 (6)(b);

[2] no exception is made for a parent who has not been able to have a "substantial parental involvement" because the parent is incarcerated, has a medical problem, etc. – the parent is not given the ability to show good cause, as is the case under the abandonment section;

[3] it allows the petitioner to manipulate the termination of parental rights by simply choosing the right time to file the petition – this is especially true, of course, under the proposal allowing for the termination of parental rights where there is no "substantial involvement" ***at the time of the filing of the petition.***. The requirement that the parent have a substantial parental involvement places a much higher standard on the parent to show significant responsibility on a ***daily basis***, under 48.415 (6)(b) than the current law abandonment requirement that the parent did not visit the child and did not have good cause, as is required under s. 48.415 (1)©. Under this proposal, the petitioner can simply wait until the other parent moves out, or wait six months, and then bring a petition on grounds that the other parent is no longer involved in the ***"exercise of significant responsibility for the daily supervision, education, protection and care of the child.."***

[4] it conflicts with orders that are made in Children's court in certain CHIPS cases ordering the parents not to have contact with the child for one year. A court order in such a CHIPS case becomes irrelevant if the petitioner can simply ignore the order and terminate parental rights at any time because the parent is not now involved in the ***"exercise of significant responsibility for the daily supervision, education, protection and care of the child."***

2. Memo No. 7, Summary of the October 4, 2004 Meeting of the Birth Father Registry **Working Group**

This Legislative Council memo indicates that there is a consensus in the subcommittee that ***notice to unwed fathers*** could be eliminated for a birth parent who is aware of a pregnancy but who takes no action, if there is a criminal penalty of imprisonment for 9 months or a fine of $10,000 for a party who makes a false statement in a TPR about who the father is.

We are in favor of recommendations that would create a birth parent registry, but we are opposed to the elimination of notice to fathers regarding the termination of parental rights, ***at least if the fathers had a significant relationship with the children in question.*** We say these fathers at least, because these fathers have a Constitutional Right under the Due Process Clause of the U.S. Constitution, as recognized by the U.S. Supreme Court in Lehr v. Robertson, 463 U.S. 248, 77 L Ed 2d 614, 103 S. Ct. 2985 (1983); and the Wisconsin Supreme Court in In the Matter of Sueann A.M. 176 Wis 2d 673, 500 N.W. 2d 649 (1993).

Under current law, an unmarried person has the right to notice of the termination of his parental rights under s. 48.42 (2) (b)

> (b) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established:
>
> 1. A person who has filed a declaration of interest under s. 48.025.
>
> 2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child, unless that person has waived the right to notice under 48.41 (2)©
>
> 3. A person who has lived in a familial relationship with the child and who may be the father of the child.

Paragraph 2. Above is the important paragraph. It allows the court to ask the mother for the names of any men who had sexual intercourse with the woman during the conceptive period and who therefore could be the possible fathers. The men identified will be given notice of the proceedings and their rights will be terminated if they never had a substantial relationship with the child, abandoned the child, were involved in CHIPS proceedings, etc. The men are allowed to speak for themselves about whether they failed in any of these ways.

The procedure under paragraph 2 is the best procedure to follow, because it protects the

rights of fathers, who if they knew they were fathers, would be happy to enjoy their lives together with those children. If paragraph 2 is repealed, these men (who never lived with the children) will never know that they had children nor that their parental rights have been terminated.

Sadly enough, the U.S. and Wisconsin Supreme Court decisions cited above do not protect fathers who never knew about the children. Under those decisions, their rights can be terminated without any notice at all. ***HOWEVER***, a man who ***did know*** about the birth of the child and who ***did have a significant parental responsibility*** with the child ***is entitled to notice under the U.S. and Wisconsin Constitutions.***

This means that if the proposal repeals paragraph 2 above from current law and leaves the only people who are entitled to notice to be those who (1) filed a declaration of parental interest; or (2) lived with the child, this provision will be unconstitutional as applied to a man who ***did have a significant parental relationship with the child***, but who never received notice because ***he never lived with the child.***

This is not a small population of men. It is a large population of men who never lived with the child, but who none-the-less did have a significant relationship with the child.

Those men who never received notice of the termination of their parental rights but who did have significant relationships with their children will be able to overturn the termination of parental rights and any adoption judgment based on that termination of parental rights. They have a right under the U.S. and Wisconsin Constitutions recognized by the U.S. and Wisconsin Supreme Courts. No state statute that imposes time limits or in any other way attempts to abrogate this right can trump the U.S. Constitution. To change this law, there has to be either a new decision issued by the U.S. Supreme Court or a Constitutional Amendment adopted. In the meantime, all adoptions granted after the unconstitutional termination of parental rights without notice are at risk.

Memo No. 7 refers to the fact that the mother faces a criminal charge for falsifying information. This does nothing to address the Constitutional right that a father has to notice of the termination of his parental rights. And, because it does nothing to remove those Constitutional rights, it does nothing to protect persons who adopt children from subsequently having their adoptions overturned.

Not only does the threat of criminal prosecution do nothing to protect the man who may have had a significant relationship with the child but who knows nothing of the TPR, it also may well inappropriately place the mothers at risk. The mothers sign the statements and are thus liable to prosecution, but it could easily be the adoption agency or attorney arranged by the adoption agency who is providing the undue influence on the mother not to tell the truth. Just such a situation occurred in a highly publicized case in Minnesota, where the Minnesota Supreme Court denied the father the right to contest proceedings

where he received no notice because the adoption agency influenced the mother not to put the man's name on the birth certificate.

If there are criminal penalties imposed, they should apply as well to the adoption agencies or attorneys or other advocates who influence a mother not to name the possible fathers.

Otherwise, we would hope that you would retain the current law provisions of s 48.42 (2) (b) 2, guaranteeing notice to all men who may be the father.

This is an important fundamental right. In the words of the U.S. Supreme Court:

> a natural parents "desire for the right to 'the companionship, care, custody, and management of his or her children' " is an interest far more precious than any property right . . . When the state initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. "If the state prevails, it will have worked a unique kind of deprivation . . . A parent's interest in accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one." Lassiter v. Department of Social Services. 452 U.S. 18 (1981)

1979 Assembly Bill 656 Date published: **May 20, 1980**

CHAPTER 330, Laws of 1979

AN ACT to amend 48.025 (2), 48.14 (2) (b), 48.185, 48.66, 48.91 (2), 51.42 (9) (a), 51.437 (12) (a) and 55.03; to repeal and recreate subchapter VIII of chapter 48; and to create 48.01 (1) (g) and 48.356 of the statutes, relating to termination of parental rights.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.01 (1) (g) of the statutes is created to read:

48.01 (1) (g) To provide children in the state with permanent and stable family relationships. The courts and agencies responsible for child welfare should assist parents in changing any circumstances in the home which might harm the child or which may require the child to be placed outside the home.

SECTION 2. 48.025 (2) of the statutes is amended to read:

48.025 (2) The declaration provided in sub. (1) may be filed at any time except after a termination of the natural father's rights under ~~s. 48.425 or 48.43~~ subch. VIII. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

SECTION 3. 48.14 (2) (b) of the statutes is amended to read:

48.14 (2) (b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.43 and 48.83 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

SECTION 4. 48.185 of the statutes is amended to read:

48.185 Venue. (1) Venue for any proceeding under ss. 48.12, 48.125, 48.13, 48.135, 48.14 and 48.18 may be in any of the following: the county where the child resides, the county where the child is present or, in the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred. Venue for proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child's parent pursuant to a dispositional order, in which case venue is as provided in sub. (2).

(2) Venue for any proceeding under s. 48.363 or 48.365, or under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child or parent.

SECTION 5. 48.356 of the statutes is created to read:

48.356 Duty of court to warn. (1) Whenever the judge orders a child to be placed outside the home because the child has been adjudged to be in need of protection or services under s. 48.345, 48.357, 48.363 or 48.365, the judge shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable.

(2) In addition to sub. (1), any written order which places a child outside the home under sub. (1) shall notify the parent or parents of the grounds for termination of parental rights under s. 48.415.

SECTION 6. Subchapter VIII of chapter 48 of the statutes, as affected by chapter 32, laws of 1979, is repealed and recreated to read:

CHAPTER 48

SUBCHAPTER VIII

TERMINATION OF PARENTAL RIGHTS

48.40 Definitions. In this subchapter:

(1) "Agency" means the department, a county department of social services or a licensed child welfare agency.

(2) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

48.41 Voluntary consent to termination of parental rights. (1) The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standard and factors specified in s. 48.426.

(2) The court may accept a voluntary consent to termination of parental rights only as follows:

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent and is satisfied that the consent is informed and voluntary; or

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before a judge of any court of record. This written consent shall be accompanied by the signed findings of the judge who accepted the parent's consent. These findings shall recite that the judge questioned the parent and found that the consent was informed and voluntary before the judge accepted the consent of the parent.

(c) A person who may be the father of a child born out of wedlock, but who has not been adjudicated to be the father, may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(3) The consent of a minor or incompetent person to the termination of his or her parental rights shall not be accepted by the court unless it is joined by the consent of his or her guardian ad litem. If the guardian ad litem joins in the consent to the termination of parental rights with the minor or incompetent person, minority or incompetence shall not be grounds for a later attack on the order terminating parental rights.

48.415 Grounds for involuntary termination of parental rights. At the fact-finding hearing the court may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment may be established by a showing that:

1. The child has been left without provision for its care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent;

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer; or

3. The child has been left by the parent with a relative or other person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of one year or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2 or 3. The time periods under par. (a) 2 or 3 shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) A showing under par. (a) that abandonment has occurred may be rebutted by other evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services may be established by a showing that the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363 or 48.365 containing the notice required by s. 48.356 (2), that the agency responsible for the care of the child and the family has made a diligent effort to provide the services required by the court, and:

(a) The child has been outside the home for a cumulative total period of one year or longer pursuant to such orders and the parent has substantially neglected or wilfully refused to remedy the conditions which resulted in the removal of the child from the home; or

(b) The child has been outside the home for a cumulative total period of 2 years or longer pursuant to such orders, the parent has been unable to remedy the conditions which resulted in the removal of the child from the home and there is a substantial likelihood that the parent will not be able to remedy these conditions in the future.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability may be established by a showing that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (1) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or developmental disability as defined in s. 55.01 (2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF VISITATION RIGHTS. Continuing denial of visitation rights may be established by a showing that:

(a) The parent has been denied visitation rights by court order in an action affecting marriage;

(b) At least 2 years have elapsed since the order denying visitation rights was issued and the court has not subsequently modified its order so as to permit visitation rights; and

(c) The parent would not be entitled to visitation rights if he or she were to seek such rights at the time the petition for termination of parental rights is filed.

(5) REPEATED ABUSE. Repeated abuse may be established by a showing that on more than one occasion the parent has caused death or injury to a minor or minors living in the parent's household resulting in 2 or more separate felony convictions.

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility may be established by a showing that a child has been born out of wedlock, not subsequently legitimated or adopted, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and:

1. The person or persons who may be the father of the child have been given notice under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the court and that such person or persons have never had a substantial parental relationship with the child; or

2. That although paternity to the child has been adjudicated under s. 48.423, the father did not establish a substantial parental relationship with the child prior to the adjudication of paternity although the father had reason to believe that he was the father of the child and had an opportunity to establish a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child or the mother during her pregnancy and whether the person has neglected or refused to provide care or support even though the person had the opportunity and ability to do so.

48.42 Procedure. (1) PETITION. A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child's parent, an agency or a person authorized to file a petition under s. 48.25. The petition shall be entitled "In the interest of ..... (child's name), a person under the age of 18" and shall set forth with specificity:

(a) The name, birth date and address of the child;

(b) The names and addresses of the child's parent or parents, guardian and legal custodian;

(c) A statement that consent will be given to termination of parental rights as provided in s. 48.41 or a statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges gives rise to these grounds.

(2) WHO MUST BE SUMMONED. Except as provided in sub. (2m), the petitioner shall cause the summons and petition to be served upon the following persons:

(a) The parent or parents of the child.

(b) If the child was born out of wedlock, and not subsequently legitimated or adopted and paternity has not been established:

1. A person who has filed a declaration of interest under s. 48.025.

2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice under s. 48.41 (2) (c).

3. A person who has lived in a familial relationship with the child and who may be the father of the child.

(c) The guardian, guardian ad litem and legal custodian of the child.

E N G R O S S E D 1 9 7 9 A S S E M B L Y B I L L 6 5 6

March 25, 1980 - Prepared by direction of SENATE CHIEF CLERK.

AN ACT to amend 48.025 (2), 48.14 (2) (b), 48.185, 48.66, 48.91 (2), 51.42 (9) (a), 51.437 (12) (a) and 55.03; to repeal and recreate subchapter VIII of chapter 48; and to create 48.01 (1) (g) and 48.356 of the statutes, relating to termination of parental rights.

Analysis by the Legislative Reference Bureau

Engrossing procedures:

The engrossed text of Assembly Bill 656 consists of Assembly Substitute Amendment 2, as affected by the following amendment adopted in the assembly: Assembly Amendments 2, 3 and 4.

Content of Engrossed 1979 AB-656.

This bill revises the laws governing termination of parental rights. Under this bill parental rights may be terminated after either 1) the parent or parents whose rights are to be terminated voluntarily consent, or 2) grounds for an involuntary termination of parental rights are established at a fact-finding hearing.

Voluntary consent to termination of parental rights may only be given by the parent in one of 2 ways: 1) if the parent appears personally at the hearing and the judge explains to the parent the effects of a termination of parental rights and the judge is satisfied that the parent's consent is informed and voluntary; or 2) if the court finds that it would be impossible or difficult for the parent to appear in court personally, the court may accept a written statement of consent from the parent that was given before a judge in another court if it is accompanied by signed findings from that judge stating that he or she questioned the parent and found that the consent of the parent to the termination of parental rights was informed and voluntary. The consent of any minor or incompetent parent must be joined in by his or her guardian ad litem.

The grounds for involuntary termination of parental rights are abandonment, continuing need of protection or services, continuing parental disability, continuing denial of visitation rights, repeated abuse or neglect and failure to assume parental responsibility for a child born out of wedlock. Abandonment may be established in one of 3 ways: 1) the

requesting the termination has made an investigation and at least 60 days have elapsed during which the parent cannot be found; 2) the child was left by the parent with a relative or some other person and the parent has failed to visit or communicate with the child for a period of one year or longer, even though the parent knows or could discover the whereabouts of the child; or 3) the child was found to be in need of protection and services and placed outside the home by a court order and the parent has failed to communicate or visit with the child for a period of 6 months or longer. The time periods for abandonment may not include any time during which the parent failed to visit the child because the parent was forbidden to by a court order. However, this may constitute grounds under continuing denial of visitation rights, discussed below. Whenever a court orders a child placed outside the home because the child is in need of protection or services, the court shall warn the parent both orally and in the written order of the grounds for a possible termination of parental rights.

The 2nd possible ground for the involuntary termination of parental rights is that the child is in continuing need of protection and services. This may be shown after a child has been placed outside the home pursuant to a court order declaring the child to be in need of protection or services and containing the warning to the parent described above and: 1) where the child has been placed outside the home for a cumulative total period of one year or longer and the parent has substantially neglected or wilfully refused to remedy the conditions which caused the child to be removed from the home; or 2) where the child has been placed outside the home for a cumulative total period of 2 years or longer and the parent has been unable to remedy the conditions which caused the child to be removed from the home and there is a substantial likelihood that the parent will not be able to remedy these conditions in the future.

The ground of continuing parental disability may be established by showing to the court that the parent is presently and has been hospitalized or in a treatment facility for mental illness or developmental disability for a total cumulative period of at least 2 years within the past 5 years and that the condition of the parent is likely to continue indefinitely and that the child is not being provided with adequate care by a parent, a guardian or by a relative who has legal custody of the child.

The ground of continuing denial of visitation rights may be established by showing that a court has denied the parent visitation rights for 2 years or longer and that the parent would be unable to obtain visitation rights from the court.

The ground of repeated abuse or neglect may be established by showing that on more than one occasion the parent has caused death or injury to a minor in his or her household resulting in 2 or more separate felony convictions.

The ground of failure to assume parental responsibility may be established by showing that a child was born out of wedlock, not subsequently adopted or legitimated, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights, that the person who may be the father of the child was given notice of the hearing and that he failed to appear and that he never had a substantial parental relationship with the child as defined in the bill. There may also be grounds for termination of parental rights if paternity is adjudicated during the termination of parental rights proceeding but it is shown that the father never has a substantial parental relationship with the child even though he had reason to believe that he was the father and had an opportunity to establish the substantial parental relationship with the

child.

Under this bill, a proceeding for the termination of parental rights is initiated by a petition which contains: the name, birth date and address of the child, the names and addresses of the child's parents, guardian or legal custodian and either a statement asserting that consent to the termination of parental rights will be given by the parent whose rights are to be terminated or a statement of the grounds for the involuntary termination of parental rights and the facts giving rise to these grounds. A copy of the petition and a summons to the hearing for termination of parental rights must be served upon the following parties: the parents of the child, a person who has filed a declaration of parental interest, any person or persons alleged to the court to be the father of the child or who, based upon the statements of the mother, may be the father of the child, a man who lives in a familial relationship with the child and may be the father, the guardian, guardian ad litem and legal custodian of the child, the child if the child is 12 years of age or older and to any person who must receive notice under the uniform child custody jurisdiction act, except for foster parents. However, a notice does not have to be given to a person who may be the father of a child conceived as a result of sexual assault or incest if a doctor states that he believes that sexual assault or incest has occurred. The summons must notify the parties of the possible results of a hearing for termination of parental rights and the right of a minor parent and the child to appointment of counsel if the proceeding is one for an involuntary termination of parental rights.

At the time the petition is filed, the petitioner may request the court to waive constructive notice of the hearing to a person who may be the father of a child if the father's identity is unknown. If constructive notice is not waived, the court will determine at the hearing on the petition whether constructive notice to an unknown father would substantially increase the likelihood of giving notice to the father. The court may adjourn the hearing for a period not to exceed 30 days and order that constructive notice be given.

At the hearing on the petition, which must be held within 30 days of the date the petition is filed, the court will ascertain whether any party wishes to contest the petition to terminate parental rights. If the petition is contested the court will set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition unless all necessary parties agree to waive this time period and commence the fact-finding hearing immediately. If no one contests the petition the court will immediately begin hearing evidence in support of the petition. However, before hearing any evidence the court will ensure that adequate notice has been given to a person who may be the father of a child born out of wedlock and whether any admission or consent to termination of parental rights was voluntarily given. Any necessary party or party whose rights may be affected by the proceeding will be granted a jury trial upon request. Any nonpetitioning party will be granted, upon request, a postponement of the hearing for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for a substitution of the judge. However, a jury may only make findings of fact. The court will always decide what disposition is in the best interest of the child. At the hearing on the petition the court may also adjudicate paternity and make suitable orders for the care, custody and support of the child.

If the petition for termination of parental rights is brought by a child welfare agency the court shall order the agency to submit a report to the court which will include: the social history of the child, a