

1 **AN ACT** *to amend* 48.423 (1) of the statutes; **relating to:** requirements for further
 2 participation in an action to terminate parental rights by a man alleged to be the
 3 child’s father.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Permanency for Young Children in the Child Welfare System.

Background

Under current law, an alleged father must be served with a summons and petition for an action to terminate parental rights (TPR). If paternity is then established during the TPR proceedings, the father may further participate in the proceedings.

In order for an alleged father to be summoned and to participate in the TPR proceedings after paternity has been established, at least one of the following must have occurred:

- The alleged father has filed a declaration of paternal interest, which has not been revoked.
- The mother (or other source) alleges the man to be the father.
- The man has lived in a familial relationship with the child and may be the father of the child.

Bill Draft

This draft removes the right for a man who was alleged to be the father, and determined in the TPR proceedings to be the father, but who has not otherwise declared or established a relationship with the child, to further participate in the proceedings. Specifically, under the draft, a man determined to be the father may further participate in a TPR proceeding only if the man had filed a declaration of paternal interest that has not been revoked, or if the man had lived in a familial relationship with the child.

The draft retains the requirement to serve an alleged father with a summons and petition for the TPR action, regardless of whether the

alleged father has declared or lived in a familial relationship with the child.

COMMENT: The U.S. Supreme Court has held that reliance on a putative father registry, or other measurable personal contact with a child, does not violate the due process or equal protection clauses of the U.S. Constitution. The court noted that “the mere existence of a biological link” does not merit due process protection to the extent that a demonstrated commitment to the responsibilities of parenthood would. The court also stated that a person who has never established any custodial, personal, or financial relationship with a child does not merit equal protection to a parent who has established such a relationship, and that a state may accord the 2 parents different legal rights. [*Lehr v. Robertson*, 463 U.S. 248 (1983).]

1 **SECTION 1.** 48.423 (1) of the statutes is amended to read:

2 48.423 (1) RIGHTS TO PATERNITY DETERMINATION. If a person appears at the hearing and
3 claims that he is the father of the child, the court shall set a date for a hearing on the issue of
4 paternity or, if all parties agree, the court may immediately commence hearing testimony
5 concerning the issue of paternity. The court shall inform the person claiming to be the father
6 of the child of any right to counsel under s. 48.23. The person claiming to be the father of the
7 child must prove paternity by clear and convincing evidence. A person who establishes his
8 paternity of the child under this section may further participate in the termination of parental
9 rights proceeding only if the person meets the conditions specified in sub. (2) or meets a
10 condition specified in s. 48.42 (2) (b) 1. or 3. or (bm).

NOTE: This SECTION specifies that a man determined to be the father may further participate in a TPR proceeding only if the man had filed a declaration of paternal interest, which has not been revoked, or if the man had lived in a familial relationship with the child. It removes the right of a man alleged to be the father, who has not otherwise declared or lived in a familial relationship with the child, to further participate in a TPR proceeding after his paternity has been determined.

11 **SECTION 2. Initial applicability.**

