

RESOLUTION NO.: 113—2013-14

TO THE HONORABLE, THE OUTAGAMIE COUNTY BOARD OF SUPERVISORS

LADIES AND GENTLEMEN:

MAJORITY

1 Current law allows an adult party to a contested adoption or involuntary termination of
2 parental rights petition to obtain counsel at public expense. An adult has the right to waive
3 counsel voluntarily and freely. Current law, however, does not permit a parent under 18
4 years of age to waive counsel in a contested adoption or involuntary termination of parental
5 rights. In some situations, a person will assert their right to counsel and fail to communicate
6 further with the court or their attorney. This scenario creates problems for the court and the
7 appointed attorney. The appointed attorney is required to continue representation without
8 any direction from the client. Because the client requested an attorney, the court cannot
9 consider the right to counsel waived. The result is the attorney is forced to remain on the
10 case and the client does not communicate. Legislation has been proposed that provides that
11 a parent of any age who has appeared before the juvenile court in a contested adoption or
12 involuntary termination of parental rights proceeding is considered to have waived his or her
13 right to counsel if the juvenile court has ordered the parent to appear and the parent fails to
14 appear in person as ordered without just cause. The bill also provides that repeated failure
15 by a parent to appear in person as ordered by the juvenile court is presumed to be without
16 just cause.

17
18 NOW THEREFORE, the undersigned members of the Public Safety Committee recommend
19 adoption of the following resolution.

20 BE IT RESOLVED, that the Outagamie County Board of Supervisors supports
21 legislation that provides that a parent of any age who has appeared before the juvenile court in a
22 contested adoption or involuntary termination of parental rights proceeding is considered to have waived
23 his or her right to counsel if the juvenile court has ordered the parent to appear and the parent fails to
24 appear in person as ordered without just cause. The bill also provides that repeated failure by a parent to
25 appear in person as ordered by the juvenile court is presumed to be without just cause, and

26 BE IT FINALLY RESOLVED, that the Outagamie County Clerk be directed to forward a copy
27 of this resolution to the Outagamie County Lobbyist for distribution to the Legislature and all Wisconsin
28 Counties.

29 Dated this ____ day of November, 2013

30 Respectfully Submitted,
31 PUBLIC SAFETY COMMITTEE

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James Duncan

Lee Hammen

Katrin Patience

James Pleuss

Tony Krueger

Duly and officially adopted by the County Board on: _____

Signed: _____
Board Chairperson

County Clerk

Approved: _____

Vetoed: _____

Signed: _____



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2901/1
GMM:sacjf

2013 BILL

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. and 48.23 (2) (b) 3. of the statutes; **relating to:** waiver
3 of a parent’s right to counsel in a contested adoption or an involuntary
4 termination of parental rights proceeding for failure to personally appear as
5 ordered by the juvenile court without just cause.

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 considered 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 and the parent fails to appear in person as ordered

BILL

without just cause. The bill also provides that repeated failure by a parent to appear in person as ordered by the juvenile court is presumed to be without just cause.

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:

20 48.23 (2) (b) 3. Notwithstanding subds. 1. and 2., a parent is considered to have
21 waived his or her right to counsel and to appear by counsel if the court has ordered

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SECTION 4

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1 the parent to appear in person at any or all subsequent hearings in the proceeding
2 and the parent fails to appear in person as ordered without just cause. Repeated
3 failure by a parent to appear in person as ordered is presumed to be without just
4 cause.

5 **SECTION 5. Initial applicability.**

6 (1) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. This act first
7 applies to a parent who on the effective date of this subsection is ordered to appear
8 in person at a hearing in a contested adoption or an involuntary termination of
9 parental rights proceeding.

10 (END)