

1        **AN ACT to create** 48.415 (3m) of the statutes; **relating to:** creating involuntary  
 2            termination of parental rights ground of continuing incarceration.

*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 adoption and termination of parental rights law.

The bill draft creates a new ground for involuntary termination of parental rights (TPR) relating to continuing parental incarceration.

3        **SECTION 1.** 48.415 (3m) of the statutes is created to read:

4            48.415 (**3m**) CONTINUING PARENTAL INCARCERATION. Continuing parental incarceration,  
 5            which shall be established by proving that all of the following conditions are met:

6            (a) The parent is presently, and for a cumulative total period of at least 2 years within  
 7            the 5 years immediately prior to the filing of the petition, has been incarcerated.

8            (b) Due to the present incarceration, placement of the child with the parent within the  
 9            2–year period following the fact–finding hearing under s. 48.424 is unlikely.

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

**NOTE:** The bill draft creates a new ground for involuntary TPR entitled “Continuing parental incarceration”. Under the bill draft, a parent’s parental rights may be involuntarily terminated if all of the following are proved:

1. The parent is presently incarcerated and has been incarcerated for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the TPR petition.

2. Due to the parent’s present incarceration, it is unlikely that the child can be placed with the parent within the 2–year period following the TPR fact–finding hearing.

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

**NOTES:** 1. This bill draft is based on a request by the Milwaukee County district attorney's office to create a ground for involuntary TPR under which a parent's parental rights could be terminated upon proving that the parent has been convicted of a crime and been sentenced to a period of incarceration of 15 months or more.

2. The bill draft patterns the ground of "Continuing parental incarceration" after the current ground of "Continuing parental disability" which requires proving that the parent is hospitalized or institutionalized and has been for 2 of the previous 5 years; that the hospitalization or institutionalization is likely to continue indefinitely, and that the child is not receiving adequate care from a relative, parent, or guardian.

3. An alternative to this bill draft is to amend the involuntary TPR ground that requires proving that the child is in continuing need of protection or services so that the agency responsible for the child would not be required to make reasonable efforts to provide services to at least some incarcerated parents.