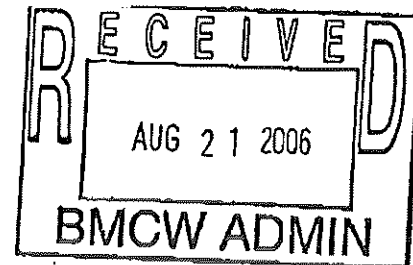


DCFS INFO MEMO 2006 - 14

August 16, 2006



STATE OF WISCONSIN  
Department of Health and Family Services  
Division of Children and Family Services

To: Area Administrators/ Human Services Area Coordinators  
Bureau Directors  
County Departments of Community Programs Directors  
County Departments of Developmental Disabilities Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
Section Chiefs/Licensing Chiefs  
Tribal Chairpersons/Human Services Facilitators

From: *for* Burnie Bridge *WB7*  
Administrator

Re: 2005 Wisconsin Act 293, Provisions Impacting Termination of Parental Rights Proceedings.

Governor Doyle recently signed 2005 Wisconsin Act 293 into law. Act 293 makes a number of changes to Chapter 48. This Information Memorandum addresses the provisions of Act 293 that impact termination of parental rights proceedings. The changes fall into three categories: changes to the grounds for termination of parental rights (TPR); changes to procedures in TPR proceedings; and changes to appeals of TPR proceedings. A number of these changes are technical and agencies should consult with their district attorney or corporation counsel for further guidance. Act 293 may be found at the following web address: <http://www.legis.state.wi.us/2005/data/acts/05Act293.pdf>.

#### Grounds for Termination of Parental Rights

Under prior law, all grounds for involuntary TPR applied to parents of a child. Act 293 provides that all grounds for involuntary TPR also apply to persons who may be the parent of a child.

In addition, Act 293 modifies the following grounds for involuntary TPR:

- Failure to Assume Parental Responsibility: Substantial Parent Relationship  
Prior law, under 48.415(6)(a), Stats., required that the failure to assume parental responsibility be established by proving by clear and convincing evidence that the parent had never had a substantial parental relationship with the child.

Act 293 modifies this ground by providing that failure to assume parental responsibility is established by proving by clear and convincing evidence that the parent has not had a substantial parental relationship with the child. The intent of the change is that the TPR ground could be met even if the parent had a parental relationship with the child sometime in the past. It is not clear that the change in law will accomplish the intent.

- Prior Involuntary TPR to Another Child  
Under prior law (s. 48.415(10)(a), Stats.), the ground of prior involuntary TPR to another child could be used only when the child who was the subject of the petition was adjudicated to be in need of protection or services (CHIPS) because of abuse, neglect, or abandonment and, that within three years prior to the child being adjudicated CHIPS, the court ordered the parent's parental rights to another child terminated. This ground remains in law.

Act 293 adds to the ground so it also applies to a child who was born after the filing of a TPR petition on the ground of prior involuntary TPR for a sibling of the child, if, within three years prior to the birth of the child who is the subject of the petition, the court had ordered the termination of parental rights on any ground, with respect to another child of the person whose parental rights are sought to be terminated. s. 49.415(10) (a) and (b), Stats. Both new criteria must be proven, but the child does not have to be adjudicated a child in need of protection or services to apply the new criteria.

This change first applies to petitions filed after April 20, 2006, that propose to terminate the parental rights to a child born after a petition was filed to terminate the parental rights to a sibling. However, the initial applicability date does not prevent a court from considering prior orders that terminated the parental rights to a child who is not the subject of the petition, in determining whether to terminate the parental rights of a person on this ground.

- Continuing Need for Protection and Services

Prior law under s. 48.415(2)(a)(3), Stats., required that the ground of continuing need for protection or services was established by proving by clear and convincing evidence that: the child has been found to be in need of protection and services and placed in out-of-home care, that the agency has made reasonable efforts to provide services to the child and family ordered by the court, that the child has been outside the home for a cumulative period of six months or longer, that the parent has failed to meet the conditions established for the safe return of the child to the home, and that there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the TPR fact finding hearing.

Act 293 modifies the ground so that the showing must be that there is a substantial likelihood that the parent will not meet the conditions within the upcoming nine month period. All other elements of this ground remain the same, and must be proved.

This change should be incorporated into TPR warnings that are given by the court under s. 48.356(2) or s. 938.356(2), Stats., on the effective date of Act 293, April 21, 2006.

#### Termination of Parental Rights Procedures

- Penalty for False Statement in TPR Proceeding

Under current law, a person may be convicted of perjury for orally making a false statement under oath or affirmation. Prior to Act 293 there was not a general penalty for making a statement if it was not made under oath or affirmation.

Act 293 creates a penalty for making a false statement or misrepresentation of material fact in the course of a TPR proceeding with the intent to prevent a person who is entitled to receive notice of the TPR proceeding from receiving notice. The statute does not require that the statement or misrepresentation be made under oath. Under Act 293 making such a false statement or misrepresentation is punishable by a fine not to exceed \$10,000 or imprisonment for not more than nine months, or both. However, the bill permits a person to refuse to make a statement or representation of material fact in a TPR proceeding for the purpose of preventing a person who is entitled to receive notice of the TPR proceeding from receiving notice if the person fears that making such a statement would place the person or another person at risk of domestic abuse or if the refusal is because of a recent overt act, attempt, or threat that leads him or her to reasonably believe that the refusal is the only means of preventing the abuse to him or herself or another.

- Voluntary Consent to TPR by Telephone or Audiovisual Means

Under current law, a person may give voluntary consent to the termination of his or her parental rights. If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, written consent is allowed under restrictive circumstances.

Act 293 authorizes the court to allow a parent who is unable to appear in person at the hearing to provide testimony by telephone or through live audiovisual means, upon request of the parent, unless good cause is shown. The telephone and audiovisual proceedings must comply with s. 807.13, Stats.

- Notice in Relinquished Infant Cases

Wisconsin law prohibits the state from seeking identifying information about the parents of a newborn child whose custody was relinquished under the safe haven law. [Ref. s. 48.195, Stats.] However, there is no provision that exempts the state from providing a copy of the summons and petition for TPR by personal service or certified mail to the parents of such a child.

Act 293 provides that notice of a TPR proceeding may be given to the parents of a relinquished infant by publication in a newspaper instead of by personal service.

- Guardian ad Litem (GAL) for Parent in TPR Proceeding

Prior to Act 293, Wisconsin law authorized but did not require a juvenile court to appoint a GAL in any appropriate matter under Chapter 48. Act 293 requires a court to appoint a GAL for a parent who is not competent to participate in a TPR proceeding or to assist their own attorney in protecting the parent's rights. The GAL is to provide information to the juvenile court relating to the parent's competency to participate in the proceeding and to provide assistance to the juvenile court and to the parent's attorney in protecting the parent's rights.

### **Appeals of Termination of Parental Rights Proceedings.**

- Time for Filing Notice of Appeal

An appeal of a TPR judgment is initiated by the filing of a notice of intent to appeal, not a notice of appeal. Under former law if the notice of intent was filed before the TPR judgment was entered, it was found to be filed too early and not considered valid notice.

Act 293 places a notice of intent to appeal on the same footing as a notice of appeal, so that if the record discloses that the judgment or order that is being appealed was entered after the notice of appeal or the notice of intent to appeal was filed, the notice will be treated as if it was filed after entry of the judgment or order and on the same day as the judgment or order.

- Notification That Appeal Will Not Be Filed

As noted above, an appeal of a TPR judgment is initiated with a notice of intent to appeal and within 15 days of filing the notice of intent to appeal the appellant must request the transcript and juvenile court record. The clerk of the circuit court must serve a copy of the court record and transcript on the appellant within 30 days after the court record is requested. Within 30 days after receiving the transcript and court record, the appellant must file a notice of appeal with the court and parties.

Act 293 requires that a person who decides not to file a notice of appeal must notify the same people who are required to be served with the notice of appeal.

- State Public Defender Indigency Determinations in TPR Appeals

Act 293 allows the State Public Defender representative to rely upon a determination of indigency made for trial representation in an appeal in TPR proceedings, unless a request for a re-determination is filed or the person's request for representation states that his or her financial circumstances have materially improved.

- Continuing Representation in TPR Appeals

Under former law, an attorney who represented a person in a TPR proceeding did not automatically continue to represent the person during the appeal of the TPR. Under Act 293 an attorney who represents a person in a TPR proceeding will continue to represent the person in

any appeal of the TPR by filing a notice of intent to appeal unless the attorney has been previously discharged by the person or the trial court.

- Written Notification of Time Limits for TPR Appeals

Current law does not require notice of appeal time limits be given to a person whose parental rights were terminated. Act 293 requires the juvenile court that orders the TPR to give the parent written notification of the time limits for appeal of the judgment if the person is present in court when the order is granted. The parent is required to sign the notification, and their attorney is required to file it with the court. The state court system is developing form, JC-1644, Notice of Right to Seek Postdisposition Relief, in response to this change.

- Enlargement of Time for Filing Notice of Appeal

Act 293 changes the law to allow the court to extend the time in which to file a notice of appeal in a TPR, if the judgment or order was entered as a result of a petition for an involuntary TPR that was filed by a district attorney, corporation counsel, or other representative of the public.

- Time Limit for Collateral Attack of TPR Judgment

Act 293 prohibits any person, for any reason, from collaterally attacking (trying to overturn the judgment indirectly using a process other than an appeal of the judgment) a TPR judgment more than one year after the date on which the time limit for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided, whichever is later.

The provision on attorneys continuing to represent clients on TPR appeals, the provision on abandoning an appeal and the provisions on extending the time for filing a notice of appeal in cases filed by an attorney representing the public first apply to TPR judgments or orders granted under s. 48.43, Stats., on the effective date of Act 293, April 21, 2006.

**Effective Date:** The above provisions in this law become effective on April 21, 2006. Initial applicability to cases which have already begun is discussed above.

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**MEMO WEB SITE:**

[http://dhfs.wisconsin.gov/partners/dcfs\\_info](http://dhfs.wisconsin.gov/partners/dcfs_info)

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