
Wisconsin Legislative Council

AMENDMENT MEMO



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2019 Assembly Bill 559

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1

2019 ASSEMBLY BILL 559

2019 Assembly Bill 559 generally does the following:

- Eliminates the right to a jury trial in an involuntary termination of parental rights (TPR) proceeding.
- Provides that the first review of a child’s permanency plan be done through a hearing to the court within six months after the date on which the child was removed from the home.
- Creates a new ground for finding that a child is need of protection of services (CHIPS) because the child is deemed “drug-affected.”
- Modifies the following existing grounds for involuntary TPR: (1) abandonment; (2) failure to assume parental responsibility; (3) continuing need of protection or services; and (4) continuing denial of periods of physical placement or visitation.
- Creates the following new grounds for involuntary TPR: (1) parental incarceration; and (2) drug-affected child.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Jury Trials and Permanency Plan Reviews

Assembly Substitute Amendment 1 retains the bill provisions regarding TPR jury trials and permanency plan reviews. In other words, the substitute amendment eliminates the right to a jury trial in an involuntary TPR proceeding and provides that the first review of a child’s permanency plan be done through a hearing to the court within six months after the date on which the child was removed from the home.

CHIPS Ground for Drug-Affected Child

The substitute amendment generally retains the bill provisions regarding the definition of a drug-affected child and the CHIPS ground with some modifications. Under the substitute amendment, a “drug-affected child” is a child who suffered prenatal exposure to a controlled substance or alcohol, used by the mother for a nonmedical purpose, as evidenced by one of the following:

- Withdrawal symptoms in the child at birth.
- A positive result from a toxicology test of the mother or child at the time of the child’s birth.

- Developmental delays or other symptoms during the child’s first year of life that have been diagnosed as fetal alcohol spectrum disorder or as caused by prenatal exposure to a controlled substance.

“Drug-affected child” also includes a child whose basic needs and safety have been adversely affected by a parent or guardian’s chronic and severe use of alcohol or a controlled substance. The substitute amendment cross-references a current law description of basic needs. Under current law, “basic needs” include the need for adequate food, clothing, and shelter; the need to be free from physical, sexual, or emotional injury or exploitation; the need to develop physically, mentally, and emotionally to their potential; and the need for a safe and permanent family.

The substitute amendment also provides that the CHIPS ground for a drug-affected child applies only to a petition that is filed within 18 months of the child’s birth.

Modifying Grounds for Involuntary TPR

The substitute amendment does not include the bill provisions modifying: (1) abandonment; (2) failure to assume parental responsibility; and (3) continuing need of protection or services. However, it does retain the provisions relating to the involuntary TPR ground based on continuing denial of periods of physical placement or visitation.

Continuing Denial of Periods of Physical Placement or Visitation

Under current law, the continuing denial of periods of physical placement or visitation TPR ground may be established by proving all of the following:

- The parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under a CHIPS or JIPS order.
- That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the order has not been subsequently modified to permit physical placement or visitation.

Under the substitute amendment, the one year timeline may begin when the court enters an order for temporary custody, when the child is placed outside the home under a consent decree, or when a court-approved permanency plan places the child outside the home.

TPR Warning

Under current law, whenever a court orders that a child be placed outside the home, orders continued placement outside the home, or denies a parent visitation under a CHIPS or JIPS disposition or change in placement, the court must warn the parent or parents who appear in court of any TPR grounds that may be applicable and the conditions necessary for the child to be returned to the home or for the parent to be granted visitation.

The substitute amendment creates a new provision requiring that the warning must be given, both orally and in writing, when the parent or parents appear in court at the time the court enters an order for temporary custody or a consent decree. The substitute amendment also provides that the warning must include any conditions for the parent to be granted visitation with the child, if such conditions are established.

New Grounds for Involuntary TPR

Like the bill, the substitute amendment creates two new grounds for involuntary TPR: (1) parental incarceration; and (2) drug-affected child. The substitute amendment generally retains the provisions of the bill relating to parental incarceration, with some modification, but significantly modifies the elements required to establish the drug-affected child TPR ground.

Parental Incarceration

Under the substitute amendment, the parental incarceration TPR ground is established by proving the following:

- That the child has been adjudged CHIPS and, while the parent is incarcerated, has been placed, or is continued in placement, outside the home.
- That the parent is incarcerated at the time of the TPR fact-finding hearing.
- That the parent is likely to continue to be incarcerated for a substantial period of the child's minority. In determining whether the parent is likely to continue to be incarcerated for a substantial period of the child's minority, the court may consider whether the parent has a history of repeated incarceration.

Drug-Affected Child

The bill provides that the drug-affected child ground may be established by proving that the child has been adjudged CHIPS as a drug-affected child, based on either prenatal exposure to alcohol or a controlled substance or because child's basic needs and safety have been adversely affected by a parent's chronic and severe use of alcohol or a controlled substance. The bill also provides parents with an affirmative defense, meaning that the ground may not be established if the parent proves the following by a preponderance of the evidence:

- That the parent enrolled in a substance abuse treatment and recovery program within 90 days of the birth of the child or the placement of the child outside the home pursuant to a CHIPS dispositional order.
- That the parent continues to maintain substantial compliance with a substance abuse treatment or recovery program.

The substitute amendment does not include an affirmative defense for parents. It instead provides that the drug-affected child ground may be established if the party petitioning for involuntary TPR proves all of the following:

- That the child has been adjudged CHIPS as a drug-affected child because his or her basic needs and safety have been adversely affected by a parent or guardian's chronic and severe use of alcohol or a controlled substance and has been placed outside the home in a CHIPS proceeding.
- That one of the following applies:
 - The parent has not made reasonable efforts to enroll in a substance use disorder treatment or recovery program within 90 days of the placement of the child outside the home pursuant to one or more orders in the CHIPS proceeding.
 - The parent enrolled in a substance use disorder treatment or recovery program after placement of the child outside the home pursuant to one or more orders in the CHIPS proceeding but has not maintained substantial compliance with the program.
- That the parent is not participating in a drug court program.

- That there is a substantial likelihood that the parent will not meet the conditions for the safe return of the child to the home by the anticipated date that the child's permanency goal will be achieved, as specified in the child's permanency plan.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

The amendment clarifies the relevant date for purposes of one of the elements under the new drug-affected child involuntary TPR ground. Specifically, under the amendment, the petitioner must prove that there is a substantial likelihood that the parent will not meet the conditions for the safe return of the child to the home by the date established by the court or a review panel at the child's most recent permanency review or permanency hearing prior to the filing of the TPR petition.

BILL HISTORY

2019 Assembly Bill 559 was introduced by Representative Dittrich on October 23, 2019. Representative Dittrich offered Assembly Substitute Amendment 1 on December 6, 2019, and offered Assembly Amendment 1 to Assembly Substitute Amendment 1 on December 12, 2019. On December 17, 2019, the Assembly Committee on Family Law recommended adoption of the amendment on a vote of Ayes, 9; Noes, 0; adoption of the substitute amendment, as amended, on a vote of Ayes, 8; Noes, 1; and passage of the bill, as amended, on a vote of Ayes, 7; Noes, 2.

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