



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 73**

May 28, 2003 – Offered by COMMITTEE ON CHILDREN AND FAMILIES.

1 **AN ACT to amend** 48.14 (2) (a), 48.14 (2) (b), 48.185 (2), 48.21 (4) (intro.), 48.417
2 (3) and 48.417 (4); and **to create** 48.21 (4m) and 48.417 (1m) of the statutes;
3 **relating to:** termination of parental rights and adoptive placement of a
4 newborn child whose custody has been relinquished by his or her parent.

Analysis by the Legislative Reference Bureau

Under current law, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn child) may be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital staff member and does not indicate an intent to return for the newborn child. Within 24 hours after taking the newborn child into custody, the law enforcement officer, emergency medical technician, or hospital staff member must deliver the newborn child to the intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court), and the intake worker must determine whether to hold the newborn child in custody. If the intake worker determines to hold the newborn child in custody, a hearing must be held within 48 hours of that determination to determine whether the newborn child shall continue to be held in custody. If the juvenile court finds that the newborn child should continue to be held in custody, the juvenile court must include in its order continuing the newborn child in custody a determination

that reasonable efforts to make it possible for the newborn child to return safely home are not required and must hold a hearing within 30 days after that determination to determine a permanency plan for the newborn child, which is a plan designed to ensure that a child quickly attains a placement or home providing long-term stability. Current law also permits the juvenile court to involuntarily terminate the parental rights of a parent of a newborn child on the grounds that the parent relinquished custody of the newborn child when the newborn child was 72 hours old or younger.

This substitute amendment provides that if a juvenile court determines that a newborn child whose custody has been relinquished as provided under current law should be continued to be held in custody, the juvenile court must transfer guardianship and legal custody of the newborn child to the Department of Health and Family Services (DHFS), a child welfare agency that is licensed to accept guardianship of children and to place children for adoption, or a county department of human services or social services (county department) that is authorized to accept guardianship of children and to place children for adoption, order DHFS, the child welfare agency, or the county department (collectively, “agency”) to place the newborn child for adoption in a licensed foster home or a licensed treatment foster home, and include in the continuation of custody order a finding that there is probable cause to believe that custody of the newborn child has been relinquished as provided under current law. Under the substitute amendment, the agency making the placement must require any proposed adoptive parent to sign a statement acknowledging that the proposed adoptive parent understands that there is no guarantee that the adoption will be finalized. The substitute amendment also requires a petition to terminate the parental rights of a parent of a newborn child who has been relinquished as provided under current law to be filed by the district attorney, corporation counsel, or another appropriate official of the county in which the relinquishment occurred no earlier than 30 days after the date on which the child was relinquished and no later than 60 days after the date on which the juvenile court found probable cause to believe that the child was relinquished.

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

1 **SECTION 1.** 48.14 (2) (a) of the statutes is amended to read:

2 48.14 **(2)** (a) For a minor, where parental rights have been terminated under
3 subch. VIII; ~~or~~.

4 **SECTION 2.** 48.14 (2) (b) of the statutes is amended to read:

5 48.14 **(2)** (b) The appointment and removal of a guardian of the person for a
6 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and

1 48.978 and ch. 880 and for a child found to be in need of protection or services under
2 s. 48.13 (1) or (2m) because the child is without a parent or guardian or because
3 custody of the child has been relinquished under s. 48.195 (1).

4 **SECTION 3.** 48.185 (2) of the statutes is amended to read:

5 48.185 (2) In an action under s. 48.41, venue shall be in the county where the
6 birth parent or child resides at the time that the petition is filed. Venue for any
7 proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under subch. VIII
8 when the child has been placed outside the home pursuant to a dispositional order
9 under s. 48.345 or 48.347, shall be in the county where the dispositional order was
10 issued, unless the child's county of residence has changed, or the parent of the child
11 or the expectant mother of the unborn child has resided in a different county of this
12 state for 6 months. In either case, the Venue for any proceeding under s. 48.13 (2m)
13 concerning a child whose custody has been relinquished under s. 48.195 (1) shall be
14 in the county in which the relinquishment occurred. Notwithstanding the venue
15 specified in this subsection, the court may, upon a motion and for good cause shown,
16 transfer the case any action or proceeding specified in this subsection, along with all
17 appropriate records, to the county of residence of the child, parent, or expectant
18 mother.

19 **SECTION 4.** 48.21 (4) (intro.) of the statutes is amended to read:

20 48.21 (4) CONTINUATION OF CUSTODY. (intro.) If Subject to sub. (4m), if the judge
21 or circuit court commissioner finds that the child should be continued in custody
22 under the criteria of s. 48.205, ~~he or she~~ the judge or circuit court commissioner shall
23 enter one of the following orders:

24 **SECTION 5.** 48.21 (4m) of the statutes is created to read:

1 48.21 **(4m)** CONTINUATION OF CUSTODY; RELINQUISHED NEWBORN CHILD. If the
2 judge or circuit court commissioner finds that a child who has been taken into
3 custody under s. 48.195 (1) should be continued in custody under the criteria of s.
4 48.205, the judge or circuit court commissioner shall transfer guardianship and legal
5 custody of the child to the department, a child welfare agency licensed under s. 48.61
6 (5), or a county department authorized to accept guardianship under s. 48.57 (1) (e)
7 or (hm), order the department, child welfare agency, or county department to place
8 the child for adoption under s. 48.833, and include in the continuation of custody
9 order a finding that there is probable cause to believe that a parent of the child has
10 relinquished custody of the child as described in s. 48.13 (2m). The department, child
11 welfare agency, or county department making the placement shall require any
12 proposed adoptive parent to sign a statement acknowledging that the proposed
13 adoptive parent understands that there is no guarantee that the adoption will be
14 finalized.

15 **SECTION 6.** 48.417 (1m) of the statutes is created to read:

16 48.417 **(1m)** RELINQUISHED CHILD; WHEN PETITION REQUIRED. If the court has
17 found, under s. 48.21 (4m), probable cause to believe that a parent of the child has
18 relinquished custody of the child as described in s. 48.13 (2m), the district attorney,
19 corporation counsel, or other appropriate official designated under s. 48.09 of the
20 county in which the relinquishment occurred shall file a petition under s. 48.42 (1)
21 to terminate the parental rights of the parent or parents of the child or, if a petition
22 under s. 48.42 (1) to terminate those parental rights has already been filed, shall join
23 in the petition no earlier than 30 days after the date on which the child was
24 relinquished as described in s. 48.13 (2m) and no later than 60 days after the date

1 on which the court found, under s. 48.21 (4m), probable cause to believe that the child
2 was relinquished as described in s. 48.13 (2m).

3 **SECTION 7.** 48.417 (3) of the statutes is amended to read:

4 48.417 (3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition is filed or
5 joined in as required under sub. (1) or (1m), the agency primarily responsible for
6 providing services to the child under a court order shall, during the pendency of the
7 proceeding on the petition, work with the agency identified in the report under s.
8 48.425 (1) (f) that would be responsible for accomplishing the adoption of the child
9 in processing and approving a qualified family for the adoption of the child.

10 **SECTION 8.** 48.417 (4) of the statutes is amended to read:

11 48.417 (4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required
12 under sub. (1) or (1m), the person who filed or joined in the petition shall notify the
13 department of that filing or joinder.

14 **SECTION 9. Initial applicability.**

15 (1) TERMINATION OF PARENTAL RIGHTS AND ADOPTIVE PLACEMENT OF NEWBORN CHILD
16 WHOSE CUSTODY HAS BEEN RELINQUISHED. This act first applies to a child whose custody
17 is relinquished, as described in section 48.195 (1) of the statutes, on the effective date
18 of this subsection.

19 (END)