

CHAPTER 322.

ADOPTION.

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322.01 Petition for adoption; who may be adopted. Any adult may petition the county court of the county of his residence for permission to adopt a person of any age; and any nonresident of the state who is related to the person to be adopted may petition the county court of the county in which such person resides for such permission; but no petition by a married person shall be granted unless the other spouse joins therein or is the natural father or mother of such person. [1945 c. 253; 1947 c. 218]

Note: Under sec. 4021, Stats, 1917, providing that no petition for adoption made by a married person shall be granted unless the husband or wife of the petitioner shall join therein, the county court was without jurisdiction to consider a petition or to issue an order of adoption where the wife of the petitioner failed to join in the petition, although no reference was made in the petition or in the proceedings to the fact that the petitioner was married. Will of Bresnehan, 221 W 51, 266 NW 93.

Valid order of adoption might be entered upon petition of wife who is inhabitant of this state and natural parents of child to be adopted, where husband joins in such petition, although he is inhabitant of another state. (322.01, Stats, 1943) 32 Atty. Gen. 393. An adoption order entered by the court of a county other than that in which the prospective parents reside would probably be invalid and subject to attack in collateral proceedings at any time. (Stats. 1943) 33 Atty. Gen. 57.

322.02 Investigation; probationary residence. (1) Upon the filing of a petition for adoption the court shall cause an investigation to be made of the environment and antecedents of the person to be adopted to ascertain whether he is a proper subject for adoption, and of the home of the petitioner to determine whether it is a suitable home. The investigation shall be made by a licensed child welfare agency or the Wisconsin child center or county home for dependent children or by a probation officer or by some other person or by the state department of public welfare, as the court directs.

(2) The results of such investigation shall be fully reported to the court prior to hearing the petition. The report shall be filed with and be part of the records of the proceedings. The report shall state the facts found and show that the proposed home was inspected and that a careful inquiry was made as to the suitability of the home. The report shall also include additional facts necessary to enable the state bureau of vital statistics to fill out a new birth certificate as authorized by section 69.33. Inquiry shall be made of at least 2 responsible citizens residing in the same community as the petitioner, and of his pastor. If the parental rights of the natural parents of a minor have been judicially terminated, the report shall contain a summary of the proceedings.

(3) No petition for the adoption of a minor shall be granted until he has lived 6 months in the home of the petitioner; but this requirement may be waived by the court upon good cause shown when the court is satisfied that the minor and the home of the petitioner are suited to each other. [1939 c. 524; 1943 c. 93; 1943 c. 275 s. 66; 1943 c. 503 s. 69; 1947 c. 218, 540]

Comment of Interim Committee, 1947: New (1) is broadened to provide for investigation even though the person to be adopted is an adult. The clause "which placed the child in the home of the petitioner" is omitted from (1) because it does not always happen that an agency or institution has placed the child. The state public school is inserted in new (1). Its agents make investigations under 48.22 (4). (Bill 393-S)

322.03 Adoption; notice of hearing. (1) The court shall appoint a time and place for hearing the petition, and shall allow a reasonable time, not exceeding 30 days, for the investigation required by section 322.02. Notice of the hearing shall be mailed to the person or agency making such investigation and proof thereof shall be filed. If the hearing is not had at the time appointed, it shall stand adjourned. The court may, upon its own motion or upon the motion of an interested person, fix another time for the hearing and upon such hearing may grant or deny the petition or grant a further adjournment.

(2) The petitioner and the person to be adopted, if over 14 years of age, shall attend the hearing, unless the court orders otherwise.

(3) The consent of the person to be adopted and of the petitioner shall be given in such manner as the court directs.

(4) The hearing may be in chambers unless an interested person objects. [1939 c. 524; 1941 c. 259; *Supreme Court Order, effective July 1, 1945; 1945 c. 328; 1947 c. 218*]

322.04 Consent to adoption. (1) **GENERAL RULE; FORMS.** Except as otherwise specified in this section, no adoption of a minor shall be granted without the written consent of his parents or his guardian if he has one. In the case of a minor 14 years of age, the consent of the minor is necessary and must be given in writing before the county judge. The court may for cause waive the requirement that consent be given in the presence of the county judge. The state department of public welfare shall prescribe forms for use in giving consent and these forms shall include the reasons for consent. The consent of the father of an illegitimate child is not required in any case. As used in this section, the word "guardian" does not mean or include guardian ad litem nor one who has temporary custody or control of the minor.

(2) **CONSENT IF PARENTAL RIGHTS ARE TERMINATED.** If the parental rights of one parent have been judicially terminated, the consent of the other is sufficient; but if the parental rights of both parents or the surviving parent or the mother of an illegitimate minor have been so terminated, adoption may be granted on receipt of a report and recommendation of the state department of public welfare, or if the permanent care, custody or guardianship of the minor has been judicially transferred to the Wisconsin child center or to a licensed child welfare agency or county home for dependent children, then on the consent of the department (as to children committed to said center) or of such agency or home.

(3) **CONSENT IF NO PARENT IS LIVING, OR PARENT IS A NONRESIDENT.** If the minor has no living parent or if a nonresident parent has executed a written release, valid at the time of its execution, of the custody of the minor, adoption may be granted on receipt of a report and recommendation of the state department of public welfare, or if the permanent care, custody or guardianship of the minor has been judicially transferred to the Wisconsin child center or to a licensed child welfare agency or to a county home for dependent children then on consent of the department (as to children committed to said center) or of such agency or home. If the minor is a nonresident the report and recommendation of the state department of public welfare are required.

(4) **EXECUTION OF CONSENT BY PARENT.** The consent by a parent must be signed before the county judge or the juvenile judge of the county where the parent resides or is living or where the child was born, and after the judge has explained to the parent the effect of the consent and has examined the parent and is satisfied that consent is voluntary and is freely given. The minority of a parent is not ground for revoking consent.

(5) **REPORT BY AGENCY OR HOME.** If a child welfare agency or a county home for dependent children or the state department of public welfare is the guardian of the minor, adoption shall not be granted until a detailed report and recommendation and consent by such guardian are filed with the court. If the department makes a report and recommendation pursuant to subsection (2), the agency or home need not report or recommend pursuant to this subsection.

(6) **CONSENT FOR ILLEGITIMATE MINOR.** Except as otherwise provided in subsection (2), the recommendation of the state department of public welfare and the consent of the mother of an illegitimate minor are required.

(7) **ADOPTION OF ADULTS.** If the person to be adopted is an adult his consent alone is required.

(8) **ABANDONMENT OF MINOR 18 YEARS OLD.** If the parents of a minor who is 18 years of age have abandoned him the court may terminate the rights of the parents in the adoption proceeding after notice and a hearing as provided in section 48.07 (7).

(9) **GUARDIAN AD LITEM FOR MINOR OR INCOMPETENT PARENT OR PARENT ON CONDITIONAL RELEASE.** In the case of a minor or incompetent parent or a parent who is on release under section 51.13, a guardian ad litem shall be appointed for the parent and the consent of such parent shall be effective only when concurred in by the guardian ad litem. [1931 c. 352 s. 2; 1939 c. 524; 1943 c. 93; 1945 c. 196, 378; 1947 c. 218, 540]

Comment of Interim Committee, 1947: Gen. 369). The phrase, most likely, was intended to mean "an illegitimate child." The question of legitimacy is determined as of the date of adoption, and one who is not legitimate should be designated as "illegitimate." Special grants of authority to public agencies to consent to adoption of minors are found in 48.22 (3), 48.28 and 48.36 (2). Those consent provisions are also expressed in new (2) and (3). Under new (2) and (3) a detailed report and recommendation (favorable or unfavorable) by the department of

The phrase "a child not born in lawful wedlock" in old (2) and (4) makes the statute ambiguous and probably makes the meaning different than is intended (26 Atty.

public welfare is substituted for consent except where the department is the child's guardian. Authority to terminate parental rights is in section 48.07 (7).

(4) is new. It is intended to make sure that the parent understands the effect of consent and that the consent is freely given. It also provides that the minority of the parent shall not be ground for revoking such consent.

(5) is new. It requires, in addition to consent, a detailed report and recommendation where the guardian is a public agency. The last sentence avoids duplication of such reports where, as in some cases, the court has asked the department for a report as to minors whose guardian is a welfare agency or county home for children.

Under new (6) the recommendation of the department is substituted for its consent.

Provision is made in new (9) for a guardian ad litem for an incompetent parent. (Bill 393-S)

Note: Written consent given in court to adoption of child by mother without her knowing who persons are that adopt child is legal and binding and satisfies requirements of statute. (Stats. 1933) 23 Atty. Gen. 156.

322.05 Order of adoption; change of name. If, after the hearing and the filing of the necessary consent to adoption, the court is satisfied that the petition is true, that the petitioners are of good moral character and of reputable standing in the community and able to properly maintain and educate the person proposed for adoption, that his best interests will be promoted by adoption, that he is suitable for adoption, and that all legal requirements have been complied with, the court shall make an order that from the date thereof such person shall be to all legal intents and purposes the child of the petitioners. The order may change his name to that of the adoptive parents. The order shall set forth all jurisdictional facts. After entry of the order the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the corrected birth certificate. [1931 c. 352 s. 2; 1939 c. 524; 1947 c. 218]

322.06 Records closed. All records of proceedings in adoption cases and all papers and books relating to such proceedings shall be kept in a separate locked file and shall not be open to inspection or copy except upon order of the court for good cause shown. No person in charge of adoption records shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by the court. All records of the investigation made by the persons or agencies directed by the court in section 322.02 (1), except those of the private licensed child welfare agencies, Milwaukee county children's home or the Wisconsin child center, shall be transferred to the state department of public welfare and placed in its closed files. [1935 c. 228; 1939 c. 524; 1943 c. 93; 1947 c. 218, 540]

Comment of Interim Committee, 1947: states. The last sentence is new. (Bill 322.06 is made more restrictive. Such a statute is common to the adoption laws of many states.)

322.07 Effect of adoption. (1) Except as otherwise provided in this section, the effect of the order of adoption is to completely change the legal status of the adopted person from that of a child of the natural parents to that of a child of the adoptive parents; and to free the adopted person from all legal obligations to or on account of the natural parents, and vice versa.

(2) If the adopted person is not survived by a spouse or by issue or by an adoptive parent and there is no heir or next of kin of the adoptive parents, the property of the adopted person shall descend and be distributed as though there had been no adoption.

(3) If a parent of the person adopted is married to the adoptive parent the relation of the child to the natural parent is not altered by the adoption.

(4) The adopted person does not lose the right to inherit from his natural parents. [1941 c. 259; 1945 c. 117; 1947 c. 218]

Comment of Interim Committee, 1947:* * * This revision is an attempt to restate briefly and clearly the meaning which the court has read into 322.07. In the Sauer case [216 W 289] the court said that this statute "does not deny to the adopted child the right to inherit from its natural parents" (p. 291) and therefore the court decided that "An adopted child does not lose his right to inherit from his natural parents" (syllabus). Hence in this revision that meaning is plainly stated. (Bill 393-S)

Subsection (4), Stats. 1935, does not apply to child born in lawful wedlock even though husband of mother is not father of such child. 25 Atty. Gen. 597.

Minor over 18 who has been abandoned by its parents may be adopted and parental rights may be terminated without necessity of committing such child to welfare bureau or state board of control. (Stats. 1937) 26 Atty. Gen. 257.

Guardian ad litem must be attorney. 26 Atty. Gen. 272.

Bigamous marriage does not constitute "lawful wedlock" and child born to such marriage cannot be adopted without consent of state board of control. (Stats. 1937) 27 Atty. Gen. 369.

Consent of the department of public welfare is a condition precedent to a valid order of adoption of an infant orphan. If the permanent care and custody of such orphan has been transferred to a licensed child welfare agency or a county home for dependent children then the county court shall obtain consent of such agency or county home before making the order of adoption. (Stats. 1943) 33 Atty. Gen. 13.

A county court cannot proceed with an adoption where the mother of the child has withdrawn her previously given written consent. 35 Atty. Gen. 155.

Note: Legal adoption destroys parental relationship and creates a new relationship. Specific performance will not lie to compel the adoptive parents to comply with their contract to let the father visit the child, although the contract was made in consideration of consent to adoption. The contract was invalid. Stickles v. Reichardt, 203 W 579, 234 NW 728.

The adoptive parents and their heirs, if any, as opposed to the natural parents and their heirs, are the heirs of an adopted child

dying without issue; if such child is not survived by adoptive parents or their heirs, then only will such child's property go to his natural parents and in their line of descent. Enactment of this section (ch. 439, laws of 1929), albeit changing the line of descent of property of an adopted child from his natural parents and their heirs to his adopted parents and their heirs, was within the legislative power. An heir apparent or presumptive has no estate, legal or equitable, vested or contingent, in the property of the person whose apparent heir

he is. Estate of Hood, 206 W 227, 239 NW 448.

An adopted child does not lose his right to inherit from his natural parents. When doubt arises as to the meaning of a statute its legislative history may be considered. (1934) Estate of Sauer, 216 W 289, 257 NW 28.

322.07 as amended by ch. 117, laws of 1945, does not give an adopted child of a predeceased child of an intestate the right to inherit from such intestate. Estate of Matzke, 250 W 204, 26 NW (2d) 659.

322.08 Subsequent adoption. The adoption of an adopted person is authorized and in such case the word father, mother or parent signifies father, mother or parent by adoption. [1947 c. 218]

322.09 Annulment of adoption; limitations. (1) In adoption proceedings failure to comply with the essential requirements of this chapter shall be ground for annulment of the order of adoption within 2 years after date of entry thereof. Except as provided in subsection (2), an order for adoption made by a court of this state which had jurisdiction of the parties and of the subject matter shall be conclusive and binding on all persons and in all proceedings after 2 years from the date of entry thereof.

(2) If the adopted person develops mental illness, mental deficiency, epilepsy or venereal disease before he is 14 years of age and from conditions existing prior to adoption, of which conditions the parents by adoption had no knowledge or information, they may petition the county court of the county in which they reside, before the adopted person is 15 years of age, for the annulment of the adoption, and if the court finds that the facts bring the petitioners within this subsection, it shall revoke the adoption and make the state department of public welfare the legal guardian of the child.

(3) The department shall be made a party to proceedings in which the validity of an adoption is an issue. Notice of the proceedings shall be served upon the department in the same manner as upon an adverse party. [1939 c. 524; 1943 c. 93; 1947 c. 218]

Note: 322.09, Stats, 1929, is ineffective to validate an order of adoption which in the first instance was void for lack of jurisdiction. The provision for a 2-year period in which to attack orders of adoption entered within 2 years prior to July, 1929, is not a bar to the invalidation of an order of adoption on which the 2-year period would have expired 9 years before the enactment of the statute. Will of Bresnehan, 221 W 51, 266 NW 98.