

## 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.

A county court would not have jurisdiction to entertain a petition for adoption by persons who are legal residents of another state and who are present in this state because the husband is stationed here for military service, where the child to be adopted is not related to the petitioner. 40 Atty. Gen. 271.

**322.02 Investigation; probationary residence.** (1) Upon the filing of a petition for adoption of a minor 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, the state department of public welfare, a public welfare agency, a public agency or by some other person, 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 within 90 days after entry of order for hearing on adoption unless extended by further order of the court, and shall 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) If the report of investigation be unfavorable, or if a situation is thereby disclosed which in the opinion of the court raises a serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem to represent the person whose adoption is proposed, if a minor, which guardian ad litem may have witnesses subpoenaed and present proof at the hearing; the reasonable compensation of the guardian ad litem and expenses incurred by him, including witness and officer fees, shall be paid out of the county treasury upon the certificate of the judge.

(4) No petition for the adoption of a minor shall be granted until he has lived 6 months in the home of the petitioner; the 6 months' requirement may be waived by order of the court upon a petition reciting the reasons therefor, when the court is satisfied that immediate action is necessary and that the minor and the home of the petitioner are suited to each other.

**History:** 1951 c. 264; 1953 c. 150, 288, 612, 631.

**322.03 Adoption; notice of hearing.** (1) The court shall appoint a time and place for hearing the petition, and in the case of the adoption of a minor shall allow a reasonable time for the investigation required by s. 322.02. Notice of the hearing shall be mailed to the agency making such investigation and to the child welfare agency or the state department of public welfare if consent or recommendation and report are required according to s. 322.04 (2), (3), (5) and (6), 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 hearing may be in chambers unless an interested person objects.

**History:** 1953 c. 150, 288, 631.

**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 or older, 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 board of county judges of Wisconsin shall prescribe forms for use in giving consent. The consent of the father of an illegitimate child is not required in any case, including the case where the father and mother have intermarried after the mother's parental rights have been judicially terminated. 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 state department of public welfare 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 department) 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 state department of public welfare 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 department) 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 a judge of any court of record, unless the court otherwise orders, 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 or older 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.** (a) In the case of a minor or incompetent parent or a parent who is on release under s. 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 written consent of the guardian ad litem.

(b) Whenever a petition shall be filed in any court showing that such court had theretofore made an order for the adoption by the petitioners of an illegitimate child of a minor mother, which order was invalid due to a failure to secure the concurrence in consent required by this subsection, the court shall appoint a time and place for hearing the petition and due notice of such hearing shall be given to the mother of such child in the manner provided in s. 324.18. If upon such hearing it shall appear that the illegitimate child was placed for adoption and continued to remain for more than 5 years in the cus-

tody of the petitioners, that the mother was, at the time of giving her consent, represented by a duly licensed attorney, and that the prior order of adoption was invalid solely because of a failure to secure concurrence in consent required by this subsection, the court shall enter an order declaring that the child shall be to all legal intents and purposes the child of the petitioners from and after the date of such subsequent order.

(10) TIME LIMIT ON REPORTS; EFFECT OF FAILURE TO FILE. Notwithstanding any requirement herein to the contrary, reports and recommendations required by this section shall be filed within 6 months after entry of the order for the hearing on petition for adoption, unless extended by further order of the court. The court may proceed with the hearing on adoption and grant or deny the same upon failure to file such report or recommendation within the time fixed by the court.

(11) DISPLACED PERSONS. Pursuant to s. 46.016 the state department of public welfare is authorized to co-operate with the federal displaced persons commission under the displaced persons act of 1948, as amended. Whenever any minor child is brought to this state pursuant to the displaced persons act and available for adoption, the department or a licensed child-placing agency shall file a petition alleging that fact with the juvenile court of the county in which such child is placed, and the court shall thereupon make an order committing the said child to the department as its guardian or to a licensed child-placing agency until it becomes of age or is adopted. Any such child may be adopted pursuant to this section, except that a certification of the displaced persons commission or of the state department of public welfare stating that such child is available for adoption shall be in lieu of any further proof of death of parents, valid release by parents, termination of parental rights, or any other similar requirements.

**History:** 1951 c. 324, 583; 1953 c. 170, 288, 612.

The adoption statutes confer on the court only the right to decree, or not to decree, adoption, and they give the court no power to award custody to the proposed adoptive parents if adoption is denied, even though the court finds that the best interests of the child so require. Adoption of Morrison, 260 W 50, 49 NW (2d) 759.

Under the provision in (9) (Stats. 1947), that in case of a minor parent a guardian ad litem shall be appointed for the parent and the consent of such parent to the adoption shall be effective only when concurred in by the guardian ad litem, such concurrence is a jurisdictional requirement which cannot be waived by the court, so that, where it has not been obtained, the judgment decreeing adoption is void. The function of a guardian ad litem for a minor parent in an adoption case, appointed after the written consent of the parent to the adoption has already been obtained, is to make his own independent investigation thereafter as to whether the parent freely and voluntarily executed such consent, and also as to whether the best interests of the child would be promoted by the guardian's joining in such consent. The attorney representing the proposed adoptive parents and the court, with whom the adoption petition is filed, should see to it that the guardian ad litem for the minor parent performs his duties and either files his written consent to adoption, or reports to the court adversely with respect thereto, before the court assumes jurisdiction by setting a hearing on the petition and ordering the investigation. Adoption of Morrison, 260 W 50, 49 NW (2d) 759.

Under the provision in (1), that the consent of the father of an illegitimate child is not required, the determining date is construed to be the date on which the court assumes jurisdiction in the adoption proceedings after all other jurisdictional requirements in respect to the consent of the mother have been met, so that the consent of the father is not required where he marries the mother after such date, even though the marriage takes place before the date of entry of the decree of adoption and the marriage operates under 245.36 to legitimize the child. Adoption of Morrison, 260 W 50, 49 NW (2d) 759.

The primary and paramount consideration in construing the adoption statutes is

the welfare of the child, and the so-called rights of the natural parents in such child are subordinate thereto. A minor mother, who can give a binding consent under (4), and who has voluntarily given her written consent to the adoption of her illegitimate child, may not later withdraw such consent without cause prior to the entry of the decree of adoption. Adoption of Morrison, 260 W 50, 49 NW (2d) 759.

Judgment of divorce awarding permanent custody of a minor child to one parent does not judicially terminate the parental rights of the other parent so as to obviate consent of such other parent to an adoption under (2). 39 Atty. Gen. 67.

(9) (Stats. 1951) was probably intended to apply only to those whose degree of incompetency is such as to permit their understanding the legal effect of their consent, those judicially committed for insanity are regarded as below that degree unless their condition permits of conditional release. 40 Atty. Gen. 362.

For an incompetent parent, rather than a minor parent, it is not necessary that a general guardian be appointed with the consequent hearing and finding on the question of incompetency in order to apply (9) (Stats. 1951). The judicial finding of incompetency and appointment of a guardian might raise the question whether the incompetent parent's consent could be given at all so as to be legally binding. The statutes make no reference to consent of a general guardian of an incompetent, which indicates that consent of such guardian is not necessary and probably that it would have no efficacy if the ward is himself unable to give a binding consent. Since the termination of parental rights may involve loss of property rights to the parent, notice of each step to that end should be given to the guardian if the parent be under guardianship. In the case of one under guardianship due to an adjudication of insanity, however, the question is not so much whether the approval of the general guardian is necessary as whether it could have any legal effect if given. 40 Atty. Gen. 362.

Under (5), a valid adoption order cannot be made with respect to a child under the guardianship of the state department of public welfare without the consent of such department. 41 Atty. Gen. 173.

**322.05 Order of adoption; legal effect; change of name; report; birth certificate, when not changed.** 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 main-

tain 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. Whenever the parents by adoption request, or the adopting parent and his or her spouse who is the natural parent of the person adopted request, that the birth certificate for the person adopted be not changed or corrected, then the court shall so order, and in such event no new or corrected birth certificate shall be filled out, filed, signed or entered by the state registrar of vital statistics or by any other person, notwithstanding the provisions of section 69.33 or any other statute or law of this state.

**322.055 Withdrawal or denial of petition.** (1) If the petition is withdrawn or denied, and if parental rights have been terminated and a child welfare agency or a county home for dependent children or the state department of public welfare is the guardian of the minor, the court shall return the child to the custody of such department or agency.

(2) If there is no such child welfare agency or county home for dependent children or state department of public welfare as guardian of the minor the court shall certify the case for appropriate action and disposition to the juvenile court.

**History:** 1951 c. 264.

**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 correspondence and papers, relating to the investigation, which are not a part of the court record, made or received 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, Wisconsin child center, or the department of public welfare created pursuant to section 49.51 (2) (a), shall be transferred to the state department of public welfare and placed in its closed files.

**History:** 1951 c. 306.

**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 relatives.

(5) The adopted person shall inherit from his adoptive relatives in the same manner as from his natural relatives.

**History:** 1953 c. 398.

In determining whether an adopted child has the right to inherit from its intestate natural relatives under statutory provisions, the statutes which control are those in force at the time of the death of the intestate. Under this section as amended in 1947, the status of an adopted child is completely changed to that of a child of the adoptive parents, and as such it has no right of inheritance from its natural relatives save for the one exception which the statute makes—the right to inherit from its natural parents. Estate of Ries, 259 W 453, 49 NW (2d) 483, 50 NW (2d) 397.

may have a dual status in matters of inheritance is a question of policy for the legislature, not for the court. The legal status of a child, whose father died and whose mother then married a man who then adopted the child, was changed by the order of adoption so that in legal effect she became the child of the adoptive father and his wife, and as such she had no claim on the estate of her natural father's aunt dying intestate. (Stats. 1947) Estate of Ries, 259 W 453, 49 NW (2d) 483, 50 NW (2d) 397. See note to 238.13, citing Estate of Holcombe, 259 W 642, 49 NW (2d) 914.

The extent to which an adopted child

**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.

**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.

(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.

**History:** 1951 c. 264.