



2003 ASSEMBLY BILL 476

August 22, 2003 - Introduced by Representatives JESKEWITZ, HAHN, TAYLOR, ALBERS, LADWIG, KRAWCZYK, LOTHIAN, FREESE, OTT, HUNDERTMARK, KESTELL, SUDER, WIECKERT, GUNDERSON, GRONEMUS, J. WOOD, VRAKAS, MCCORMICK, WEBER and VAN ROY, cosponsored by Senators PLALE, DARLING, STEPP, BRESKE and ROESSLER. Referred to Committee on Family Law.

1 **AN ACT** *to repeal* 48.42 (2) (b) 2.; *to renumber* 48.025 (3); *to renumber and*
2 *amend* 48.025 (2), 48.42 (2m) and 48.423; *to amend* 46.03 (7) (bm), 48.025 (1),
3 48.27 (3) (b) 1. a., 48.27 (5), 48.42 (2) (b) 1., 48.42 (2) (b) 3., 48.422 (6) (a), 48.43
4 (6), 48.837 (4) (e), 48.91 (2), 938.27 (3) (b) 1. a. and 938.27 (5); and *to create*
5 48.025 (2) (b), 48.025 (2) (d), 48.025 (3) (a), 48.025 (3) (c), 48.025 (3) (d), 48.025
6 (5), 48.025 (6), 48.42 (2) (b) 4., 48.42 (2m) (b) and 48.423 (2) of the statutes;
7 **relating to:** declarations of paternal interest by persons who may be the father
8 of a nonmarital child, notice to those persons of a termination of parental rights
9 proceeding involving the child, the finality of a termination of parental rights
10 order, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, any person claiming to be the father of a nonmarital child whose paternity has not been established may file with the Department of Health and Family Services (DHFS) a declaration of paternal interest in matters affecting the child. The declaration may be filed at any time before a termination of the father's parental rights (TPR) and must be in writing and signed by the person filing

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the declaration. DHFS must send a copy of the declaration to the mother, who may file a written response to the declaration. Filing a declaration does not extend parental rights to the person filing the declaration, but it does entitle that person to notice of a child in need of protection or services (CHIPS), a juvenile in need of protection or services (JIPS), or a TPR proceeding. Current law requires DHFS to release a declaration of paternal interest to the Department of Workforce Development or a county child support agency upon request or to any other person with a direct and tangible interest in the declaration and permits DHFS to release a declaration to any other person only upon court order.

This bill makes various changes relating to declarations of paternal interest. The bill requires a declaration to be filed before the child's birth or within 14 days after the child's birth and permits a declaration to be revoked at any time. The bill also requires a declaration or revocation to be verified upon oath or affirmation and, in the case of a minor, to also be signed by the parent or guardian of the minor. The bill requires DHFS to keep declarations confidential, except that DHFS must, on the request of a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) in a CHIPS, JIPS, TPR, or adoption proceeding or of a person authorized to file a CHIPS, JIPS, TPR, or adoption petition, search its files to determine whether a person who may be the father of the child who is the subject of the proceeding or action has filed a declaration. If DHFS has a declaration on file, it must issue to the requester a certified copy of the declaration. If DHFS does not have a declaration on file, it must issue to the requester a certified statement that no declaration could be located. A TPR petitioner then must file with the juvenile court, prior to the plea hearing, the certified copy of the declaration or the certified statement that no declaration could be located.

Under current law, certain persons who may be the father of a nonmarital child whose paternity has not been established must be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons include, in addition to a person who files a declaration of paternal interest, a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child, and a person who has lived in a familial relationship with the child and who may be the father of the child. A person who receives a summons and petition in a TPR proceeding has standing to appear and contest the TPR petition and, if grounds for TPR are found, may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

This bill makes certain changes relating to notice to a person who may be the father of a nonmarital child whose paternity has not been established of a TPR proceeding concerning the child. Specifically, the bill eliminates the requirement that notice be provided to a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child and instead requires notice to be provided to all of the following:

1. A person who has filed an unrevoked declaration of paternal interest, within 14 days after the birth of the child.

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2. A person who is openly living with the child and is holding himself out to be the father of the child at the time that the petition is filed or at the time that the child was removed from the home.

3. A person who has established a substantial parental relationship with the child. "Substantial parental relationship" is defined under current law to mean the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of a child.

In addition, the bill creates a presumption, in the case of a child who is six months of age or older, that a person has established a substantial parental relationship with the child if the person has openly lived with the child and held himself out to be the father of the child for a period of six months within the one-year period immediately preceding the date on which the petition is filed or the date on which the child was removed from the home.

The bill also specifies that a person who may be the father of a nonmarital child whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding might result, has the duty to protect his own rights and interests, and, therefore, is entitled to actual notice of the TPR proceeding only as provided in the bill. In addition, the bill specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations unless the person appears at the hearing, establishes paternity, and proves all of the following:

1. That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.

2. That the mother left that state without notifying or informing that person that she could be located in this state.

3. That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.

4. That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

Finally, under current law, a person whose parental rights have been terminated may petition for a rehearing on the grounds that new evidence has been discovered affecting the advisability of the court's adjudication no later than one year after the date on which the TPR judgment was entered, except that a parent who has consented to the TPR or who did not contest the TPR petition may move for relief from the judgment no later than 30 days after entry of the TPR judgment. This bill prohibits any person, for any reason, from collaterally attacking a TPR judgment more than one year after its entry.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 46.03 (7) (bm) of the statutes is amended to read:

2 46.03 (7) (bm) Maintain a file containing records of artificial inseminations
3 under s. 891.40 ~~and records of~~ declarations of paternal interest under s. 48.025, and
4 of statements acknowledging paternity under s. 69.15 (3) (b). The department shall
5 may release these those records, declarations, and statements only upon an order of
6 the court except that the department may use nonidentifying information
7 concerning artificial inseminations for the purpose of compiling statistics ~~and except~~
8 ~~that records relating to~~ declarations of paternal interest shall be released as
9 provided in s. 48.025 (3) (b) and (c), and statements acknowledging paternity shall
10 be released without a court order to the department of workforce development or a
11 county child support agency under s. 59.53 (5) ~~without a court order~~ upon the request
12 of the ~~that~~ department of workforce development or a or county child support agency
13 ~~under s. 59.53 (5) pursuant to the program responsibilities under s. 49.22 or by to~~ any
14 other person with a direct and tangible interest in the record statement.

15 **SECTION 2.** 48.025 (1) of the statutes is amended to read:

16 48.025 (1) Any person claiming to be the father of a nonmarital child who is not
17 adopted or whose parents do not subsequently intermarry under s. 767.60 and whose
18 paternity has not been established may, in accordance with procedures under this
19 section, file with the department a declaration of his interest in matters affecting
20 such the child. The department may not charge a fee for filing a declaration under
21 this section.

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1 **SECTION 3.** 48.025 (2) of the statutes is renumbered 48.025 (2) (a) and amended
2 to read:

3 48.025 (2) (a) The A declaration ~~provided in~~ under sub. (1) may be filed at any
4 time ~~except after~~ before a termination of the father's parental rights under subch.
5 VIII. This paragraph does not apply to a declaration that is filed on or after the
6 effective date of this paragraph [revisor inserts date].

7 (c) The declaration shall be in writing, shall be signed and verified upon oath
8 or affirmation by the person filing the declaration, and shall contain the person's
9 name and address, the name and last-known address of the mother, the month and
10 year of the birth or expected birth of the child, and a statement that ~~he~~ the person
11 filing the declaration has reason to believe that he may be the father of the child. If
12 the person filing the declaration is under 18 years of age, the declaration shall also
13 be signed by a parent or guardian of the person.

14 **SECTION 4.** 48.025 (2) (b) of the statutes is created to read:

15 48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the
16 birth of the child or within 14 days after the birth of the child. This paragraph does
17 not apply to a declaration filed before the effective date of this paragraph [revisor
18 inserts date].

19 **SECTION 5.** 48.025 (2) (d) of the statutes is created to read:

20 48.025 (2) (d) A person who has filed a declaration under sub. (1) may revoke
21 the declaration at any time by filing with the department a statement, signed and
22 verified upon oath or affirmation, that the person, to the best of his knowledge and
23 belief, is not the father of the child or that another person has been adjudicated as
24 the father of the child. If the person filing the revocation is under 18 years of age,
25 the revocation shall also be signed by a parent or guardian of the person.

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1 **SECTION 6.** 48.025 (3) of the statutes is renumbered 48.025 (3) (b).

2 **SECTION 7.** 48.025 (3) (a) of the statutes is created to read:

3 48.025 (3) (a) The department shall keep confidential and may not open to
4 public inspection or disclose the contents of any declaration, revocation of a
5 declaration, or response to a declaration filed under this section, except as provided
6 under pars. (b) and (c) or by order of the court for good cause shown.

7 **SECTION 8.** 48.025 (3) (c) of the statutes is created to read:

8 48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13
9 or under a substantially similar law of another state or a person authorized to file
10 a petition under s. 48.42, 48.837, or 938.25 or under a substantially similar law of
11 another state may request the department to search its files to determine whether
12 a person who may be the father of the child who is the subject of the proceeding has
13 filed a declaration under this section. If the department has on file a declaration of
14 paternal interest in matters affecting the child, the department shall issue to the
15 requester a certified copy of the declaration. If the department does not have on file
16 a declaration of paternal interest in matters affecting the child, the department shall
17 issue to the requester a certified statement that no declaration could be located. The
18 department may require a person who requests a search under this paragraph to pay
19 a reasonable fee that is sufficient to defray the costs to the department of
20 maintaining its file of declarations under this section.

21 **SECTION 9.** 48.025 (3) (d) of the statutes is created to read:

22 48.025 (3) (d) Any person who obtains any information under this subsection
23 may use or disclose that information only for the purposes of a proceeding under s.
24 48.13, 48.133, 48.14, or 938.13 or under a substantially similar law of another state

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1 and may not use or disclose that information for any other purpose except by order
2 of the court for good cause shown.

3 **SECTION 10.** 48.025 (5) of the statutes is created to read:

4 48.025 (5) The department shall publicize, in a manner calculated to provide
5 maximum notice to all persons who might claim to be the father of a nonmarital child,
6 all of the following information:

7 (a) That a person claiming to be the father of a nonmarital child may file a
8 declaration of interest under this section.

9 (b) The procedures for filing a declaration of interest.

10 (c) The consequences of filing a declaration of interest.

11 (d) The consequences of not filing a declaration of interest.

12 **SECTION 11.** 48.025 (6) of the statutes is created to read:

13 48.025 (6) (a) Any person who makes a false statement in a declaration,
14 revocation of a declaration, or response to a declaration filed under this section that
15 the person does not believe is true is subject to prosecution for false swearing under
16 s. 946.32 (2).

17 (b) Except as permitted under sub. (3), any person who intentionally obtains,
18 uses, or discloses information that is confidential under this section may be fined
19 \$1,000 or imprisoned for 90 days or both.

20 **SECTION 12.** 48.27 (3) (b) 1. a. of the statutes is amended to read:

21 48.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under
22 s. 48.025.

23 **SECTION 13.** 48.27 (5) of the statutes is amended to read:

24 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
25 to identify and notify any person who has filed a declaration of paternal interest

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1 under s. 48.025, any person who has acknowledged paternity of the child under s.
2 767.62 (1), and any person who has been adjudged to be the biological father of the
3 child in a judicial proceeding unless the biological father's person's parental rights
4 have been terminated.

5 **SECTION 14.** 48.42 (2) (b) 1. of the statutes is amended to read:

6 48.42 (2) (b) 1. A person who has filed ~~a-~~ an unrevoked declaration of paternal
7 interest under s. 48.025 before the birth of the child or within 14 days after the birth
8 of the child.

9 **SECTION 15.** 48.42 (2) (b) 2. of the statutes is repealed.

10 **SECTION 16.** 48.42 (2) (b) 3. of the statutes is amended to read:

11 48.42 (2) (b) 3. A person who ~~has lived in a familial relationship~~ is openly living
12 with the child and who may be is holding himself out to be the father of the child at
13 the time that the petition is filed or at the time that the child was removed from the
14 home.

15 **SECTION 17.** 48.42 (2) (b) 4. of the statutes is created to read:

16 48.42 (2) (b) 4. A person who has established a substantial parental
17 relationship, as defined in s. 48.415 (6) (b), with the child. In the case of a child who
18 is 6 months of age or older on the date on which the petition is filed, a person who
19 openly lived with the child and held himself out to be the father of the child for a
20 period of 6 months within the one-year period immediately preceding the date on
21 which the petition is filed or the date on which the child was removed from the home
22 is presumed to have a substantial parental relationship with the child.

23 **SECTION 18.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and
24 amended to read:

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1 48.42 (2m) (a) *Parent as a result of sexual assault.* Except as provided in this
2 subsection paragraph, notice is not required to be given to a person who may be the
3 father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1),
4 (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that
5 a sexual assault as specified in this subsection paragraph has occurred or if the
6 person who may be the father of the child has been convicted of sexual assault as
7 specified in this subsection paragraph for conduct which may have led to the child's
8 conception. A person who under this subsection paragraph is not given notice does
9 not have standing to appear and contest a petition for the termination of his parental
10 rights, present evidence relevant to the issue of disposition, or make alternative
11 dispositional recommendations. This subsection paragraph does not apply to a
12 person who may be the father of a child conceived as a result of a sexual assault in
13 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time
14 of the sexual assault.

15 **SECTION 19.** 48.42 (2m) (b) of the statutes is created to read:

16 48.42 (2m) (b) *Parent of nonmarital child.* A person who may be the father of
17 a nonmarital child who is not adopted or whose parents do not subsequently
18 intermarry under s. 767.60 and whose paternity has not been established, by virtue
19 of the fact that he has engaged in sexual intercourse with the mother of the child, is
20 considered to be on notice that a pregnancy and a termination of parental rights
21 proceeding concerning the child may occur, and has the duty to protect his own rights
22 and interests. He is therefore entitled to actual notice of such a proceeding only as
23 provided in sub. (2) (b). Except as provided in s. 48.423 (2), a person who is not
24 entitled to notice under sub. (2) (b) does not have standing to appear and contest a

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1 petition for the termination of his parental rights, present evidence relevant to the
2 issue of disposition, or make alternative dispositional recommendations.

3 **SECTION 20.** 48.422 (6) (a) of the statutes is amended to read:

4 48.422 (6) (a) ~~If the child is~~ In the case of a nonmarital child who is not adopted
5 or whose parents do not subsequently intermarry under s. 767.60 and paternity has
6 not been established, the petitioner, prior to the hearing, shall file with the court a
7 certified copy of any declaration of paternal interest filed under s. 48.025 with
8 respect to the child or a certified statement of the department, dated no earlier than
9 15 days after the date of birth of the child, that the department has searched its files
10 under s. 48.025 and no declaration with respect to the child could be located. At the
11 hearing, the court shall hear testimony concerning the paternity of the child. Based
12 on the testimony, the court shall determine whether all interested parties who are
13 known have been notified under s. 48.42 (2). If not, the court shall adjourn the
14 hearing and order appropriate notice to be given.

15 **SECTION 21.** 48.423 of the statutes is renumbered 48.423 (1) and amended to
16 read:

17 48.423 (1) RIGHT TO PATERNITY DETERMINATION. ~~If a man who alleges that he is~~
18 ~~the father of the child~~ person appears at the hearing and wishes to contest the
19 ~~termination of his parental rights~~ claims that he is the father of the child, the court
20 shall set a date for a hearing on the issue of paternity or, if all parties agree, the court
21 may immediately commence hearing testimony concerning the issue of paternity.
22 The court shall inform the ~~man~~ person claiming to be the father of the child of any
23 right to counsel under s. 48.23. The ~~man~~ person claiming to be the father of the child
24 must prove paternity by clear and convincing evidence. A person who establishes his
25 paternity of the child under this subsection may further participate in the

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1 termination of parental rights proceeding only if the person meets the conditions
2 specified in sub. (2) or meets a condition specified in s. 48.42 (2) (b) 1., 3., or 4.

3 **SECTION 22.** 48.423 (2) of the statutes is created to read:

4 48.423 (2) RIGHTS OF OUT-OF-STATE FATHERS. A person who may be the father
5 of a nonmarital child who is not adopted or whose parents do not subsequently
6 intermarry under s. 767.60 and whose paternity has not been established may
7 contest the petition, present evidence relevant to the issue of disposition, and make
8 alternative dispositional recommendations if the person appears at the hearing,
9 establishes paternity under sub. (1), and proves all of the following by a
10 preponderance of the evidence:

11 (a) That the person resides and has resided in another state where the mother
12 of the child resided or was located at the time of or after the conception of the child.

13 (b) That the mother left that state without notifying or informing that person
14 that she could be located in this state.

15 (c) That the person attempted to locate the mother through every reasonable
16 means, but did not know or have reason to know that the mother was residing or
17 located in this state.

18 (d) That the person has complied with the requirements of the state where the
19 mother previously resided or was located to protect and preserve his paternal
20 interests in matters affecting the child.

21 **SECTION 23.** 48.43 (6) of the statutes is amended to read:

22 48.43 (6) Judgments under this subchapter terminating parental rights are
23 final and, are appealable under s. 808.03 (1) according to the procedure specified in
24 s. 809.107, and are subject to a petition for rehearing or a motion for relief only as
25 provided in s. 48.46 (1m) and (2). In no event may any person, for any reason,

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1 collaterally attack a judgment terminating parental rights more than one year after
2 the date on which the judgment was entered.

3 **SECTION 24.** 48.837 (4) (e) of the statutes is amended to read:

4 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3),
5 ascertain whether the child's paternity of a nonmarital child who is not adopted or
6 whose parents do not subsequently intermarry under s. 767.60 has been
7 acknowledged under s. 767.62 (1) or a substantially similar law of another state or
8 adjudicated in this state or another jurisdiction. ~~If any person has filed a declaration~~
9 ~~of paternal interest under s. 48.025, the court shall determine the rights of that~~
10 ~~person.~~ If the child's paternity has not been acknowledged or adjudicated ~~and if no~~
11 ~~person has filed a declaration under s. 48.025, the court shall attempt to ascertain~~
12 ~~the paternity of the child and shall determine the rights of any person who may be~~
13 the father of the child as provided under s. 48.423 (1). The court may not proceed with
14 the hearing on the petitions under this section unless the parental rights of the
15 nonpetitioning parent, whether known or unknown, have been terminated.

16 **SECTION 25.** 48.91 (2) of the statutes is amended to read:

17 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted
18 or whose parents do not subsequently intermarry under s. 767.60, the court shall
19 establish ~~whether the rights of any persons who have filed declarations of paternal~~
20 ~~interest under s. 48.025 have been determined or whether~~ the child's paternity has
21 been acknowledged under s. 767.62 (1) or a substantially similar law of another state
22 or adjudicated in this state or in another jurisdiction. ~~If the court finds that no such~~
23 ~~determination has been made~~ child's paternity has not been acknowledged or
24 adjudicated, the court shall proceed, ~~prior to any action on the petition for adoption,~~
25 ~~to attempt to ascertain the paternity of the child and the rights of any person who~~

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1 ~~has filed a declaration under s. 48.025~~ shall determine the rights of any person who
2 may be the father of the child as provided under s. 48.423 (1). The court may not
3 proceed with the hearing on the petition for adoption unless the parental rights of
4 the nonpetitioning parent, whether known or unknown, have been terminated.

5 **SECTION 26.** 938.27 (3) (b) 1. a. of the statutes is amended to read:

6 938.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest
7 under s. 48.025.

8 **SECTION 27.** 938.27 (5) of the statutes is amended to read:

9 938.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
10 to identify and notify any person who has filed a declaration of paternal interest
11 under s. 48.025, any person who has acknowledged paternity of the child under s.
12 767.62 (1), and any person who has been adjudged to be the biological father of the
13 juvenile in a judicial proceeding unless the biological father's person's parental
14 rights have been terminated.

15 **SECTION 28. Initial applicability.**

16 (1) NOTICE OF AND PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS
17 PROCEEDINGS. The treatment of sections 48.42 (2) (b) 1., 2., 3., and 4., 48.422 (6) (a),
18 48.837 (4) (e), and 48.91 (2) of the statutes, the renumbering and amendment of
19 sections 48.42 (2m) and 48.423 of the statutes, and the creation of sections 48.42 (2m)
20 (b) and 48.423 (2) of the statutes first apply to a termination of parental rights
21 petition filed on the effective date of this subsection.

22 **SECTION 29. Effective date.**

23 (1) This act takes effect on the first day of the 3rd month beginning after
24 publication.

25 (END)