



## 2009 SENATE BILL 140

March 31, 2009 - Introduced by Senators DARLING, PLALE, VINEHOUT, OLSEN and LASSA, cosponsored by Representatives STONE, PASCH, SPANBAUER, TOWNSEND, GUNDERSON, PETROWSKI, GRIGSBY, RICHARDS, POCAN, A. OTT, KNODL, KESTELL and BALLWEG. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1     **AN ACT** *to repeal* 48.428 (6) (b); *to renumber and amend* 48.428 (6) (a) and  
2           48.93 (2); *to amend* 48.426 (3) (c), 48.92 (2) and 48.93 (1d); and *to create* 48.425  
3           (1) (h), 48.429, 48.43 (2) (d) and 48.93 (2) (a) of the statutes; **relating to:**  
4           posttermination of parental rights contact between a child and a birth relative  
5           of the child and disclosure of the report of an investigation of the home of a  
6           proposed adoptive parent on the request of the proposed adoptive parent.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a termination of parental rights (TPR) order permanently severs all legal rights and duties between a birth parent and the child. Current law does, however, permit the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to order visitation by a birth parent of a child placed in sustaining care following a TPR. Current law also permits the juvenile court, in the case of a child who is adopted by a stepparent or relative, to grant reasonable visitation rights to a relative of the child who has maintained a relationship similar to a parent-child relationship with the child if the juvenile court determines that the visitation is in the best interests of the child and that the relative will not undermine the adoptive parents' relationship with the child.

This bill permits a posttermination contact agreement to be entered into between the proposed adoptive parents of a child or, if at the time the agreement is entered into no proposed adoptive parent has been identified, the Department of

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Children and Families, a county department of human services or social services, or a licensed child welfare agency having guardianship, legal custody, or supervision of the child (collectively “agency”) and a birth relative of the child at any time before a TPR order is granted if: 1) the child is in the legal custody or under the supervision or guardianship of an agency; 2) the birth parent who is a party to the agreement has agreed to voluntarily consent to the TPR or not to contest an involuntary TPR, except that this condition is not met if the agreement to voluntarily consent to or not to contest the TPR is made after grounds for TPR are found at the fact-finding hearing; and 3) the child, if 12 years of age or over, consents to the terms of the agreement. A posttermination contact agreement may provide for any of the following:

1. Visitation between the child and a birth relative of the child.
2. Future contact and communication between the child, adoptive parent, or agency and a birth relative of the child.
3. The sharing of information about the child in the future between the adoptive parent or agency and a birth relative of the child.
4. The maintenance and sharing of the medical and genetic history of any birth relative who is a party to the agreement.

A posttermination contact agreement must contain: 1) an acknowledgement by all birth relatives who are parties to the agreement that the TPR and adoption are irrevocable and that failure by a party to comply with the agreement is not grounds to revoke the TPR or adoption; 2) an acknowledgement by the proposed adoptive parents or agency that the agreement is enforceable by any person who is permitted posttermination visitation, contact, communication, or sharing of information under the agreement; and 3) a statement by all parties to the agreement that the agreement was entered into voluntarily and with understanding of the terms of the agreement, that no promises or threats were made to coerce any person into entering into the agreement, and that the parties have not relied on any representations other than those contained in the agreement.

At the time a TPR order is granted, a juvenile court may approve a posttermination contact agreement if: 1) the child and the birth parent meet the conditions for entering into the agreement; 2) the agreement contains the provisions required under the bill; 3) the parties to the agreement including the birth parent and child, if 12 years of age or over, sign the agreement; 4) the agency or the child’s guardian ad litem files the agreement; 5) the juvenile court addresses all parties to the agreement and determines that the agreement was entered into voluntarily and with understanding of the terms of the agreement, that no promises or threats were made to coerce any person into entering into the agreement, and that the parties have not relied on any representations other than those contained in the agreement; 6) the agency and the child’s guardian ad litem submit to the juvenile court recommendations concerning the granting of posttermination visitation, contact, communication, or sharing of information as provided for in the agreement; and 7) the juvenile court determines that granting posttermination visitation, contact, communication, or sharing of information as provided for in the agreement would be in the best interests of the child.

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In determining whether granting posttermination visitation, contact, communication, or sharing of information as provided for in the agreement would be in the best interests of the child, the juvenile court must consider: 1) whether the child has substantial relationships with the person who would have visitation, contact, communication, or sharing of information under the agreement, and whether it would be harmful to the child not to preserve those relationships; 2) any special needs of the child and how those special needs would be affected by visitation, contact, communication, or sharing of information as provided for in the agreement; 3) the specific terms of the agreement and the likelihood that the parties will cooperate in complying with the agreement; 4) the recommendations of the agency and the child's guardian ad litem; and 5) any other factors that are relevant to the best interests of the child.

Current law requires the juvenile court to consider certain factors in determining whether TPR would be in the best interests of the child. One of those factors is whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships. Recently, the Wisconsin Supreme Court held, in *State v. Margaret H.*, 200 WI 42, 234 Wis. 2d 606, 621, that the severance of substantial relationships factor requires the juvenile court to examine the impact of a legal severance of those relationships on the broader relationships existing between the child and his or her family and that the juvenile court, in its discretion, may afford due weight to an adoptive parent's stated intent to permit continued visitation between the child and his or her pretermination family, even though such a promise is legally unenforceable after TPR and adoption. This bill requires the juvenile court, in evaluating that factor, to consider the terms of any posttermination contact agreement under the bill that has been entered into with respect to the child and permits the juvenile court to consider any other agreement by a proposed adoptive parent to permit contact between the child and his or her pretermination family after adoption of the child.

A posttermination contact agreement that has been approved by the juvenile court is enforceable by the juvenile court. Before petitioning the juvenile court for specific performance of the agreement, however, the petitioner must participate, or attempt to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute giving rise to the filing of the petition. If the juvenile court finds that a person is not in compliance with the agreement, that enforcement of the agreement is in the best interests of the child, and that the petitioner, before filing the petition, participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute giving rise to the filing of the petition, the juvenile court must issue an order requiring specific performance of the agreement, which order is the sole remedy for noncompliance with the agreement.

A posttermination contact agreement that has been approved by the juvenile court may be terminated or modified by agreement of the parties if the juvenile court finds that the termination or modification would be in the best interests of the child or by the juvenile court if a party shows that the termination or modification would

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be in the best interests of the child, or that there has been a substantial change in circumstances since the entry of the last order affecting the agreement, and that the petitioner, before filing the petition, participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute giving rise to the filing of the petition. An order to modify an approved posttermination contact agreement may limit, restrict, condition, or decrease visitation, contact, communication, or sharing of information between the child and a birth relative of the child, but may not expand, enlarge, or increase that visitation, contact, communication, or sharing of information or place any new obligations on the adoptive parent or agency.

Finally, under current law, all records and papers pertaining to an adoption proceeding may not be disclosed except under certain statutory exceptions or by order of the juvenile court for good cause shown. This bill permits a proposed adoptive parent whose home is the subject of an investigation to determine whether the home is suitable for the child (home study) to request the agency conducting the home study to disclose its report of the home study to another agency authorized to place children for adoption, the state adoption information exchange, or the state adoption center. Within ten days after receipt of such a request, the agency must disclose the report to the person named in the request.

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

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

1           **SECTION 1.** 48.425 (1) (h) of the statutes is created to read:

2           48.425 (1) (h) A statement as to whether a posttermination contact agreement  
3 has been entered into under s. 48.429. If such an agreement has been entered into,  
4 the agency shall attach a copy of the agreement to the report.

5           **SECTION 2.** 48.426 (3) (c) of the statutes is amended to read:

6           48.426 (3) (c) Whether the child has substantial relationships with the parent  
7 or other family members, and whether it would be harmful to the child to sever ~~these~~  
8 those relationships. In determining whether it would be harmful to the child to sever  
9 those relationships, the court shall consider the terms of any posttermination contact  
10 agreement that has been entered into under s. 48.429 with respect to the child and

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1 may consider any other agreement by a proposed adoptive parent to permit contact  
2 between the child and the parent or other family members after adoption of the child.

3 **SECTION 3.** 48.428 (6) (a) of the statutes is renumbered 48.428 (6) and amended  
4 to read:

5 48.428 (6) ~~Except as provided in par. (b), the~~ The court may order or prohibit  
6 ~~visitation by grant posttermination contact privileges under s. 48.429 to a birth~~  
7 ~~parent~~ relative of a child placed in sustaining care.

8 **SECTION 4.** 48.428 (6) (b) of the statutes is repealed.

9 **SECTION 5.** 48.429 of the statutes is created to read:

10 **48.429 Posttermination contact privileges. (1) DEFINITIONS.** In this  
11 section:

12 (a) “Approved posttermination contact agreement” means a posttermination  
13 contact agreement that has been approved by the court under sub. (4).

14 (b) “Birth relative” means a relative, as defined in s. 48.02 (15), by blood or  
15 marriage, and, in the case of an Indian child, also includes any additional person who  
16 is defined as a member of the Indian child’s extended family by the law or custom of  
17 the Indian child’s tribe.

18 (c) “Posttermination contact agreement” means an agreement between a  
19 proposed adoptive parent of a child or, if at the time the agreement is entered into  
20 no proposed adoptive parent has been identified, the agency having guardianship,  
21 legal custody, or supervision of the child and a birth relative of the child that provides  
22 for any of the following after termination of parental rights to the child:

23 1. Visitation between the child and a birth relative of the child.

24 2. Future contact and communication between the child, adoptive parent, or  
25 agency and birth relative of the child.

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1           3. The sharing of information about the child in the future between the adoptive  
2 parent or agency and a birth relative of the child.

3           4. The maintenance and sharing of the medical and genetic history of any birth  
4 relative who is a party to the agreement.

5           **(2) POSTTERMINATION CONTACT AGREEMENTS; WHEN PERMITTED.** At any time before  
6 a termination of parental rights order is granted, a posttermination contact  
7 agreement may be entered into between the proposed adoptive parents of a child or,  
8 if at the time the agreement is entered into no proposed adoptive parent has been  
9 identified, the agency having guardianship, legal custody, or supervision of the child  
10 and a birth relative of the child if all of the following conditions are met:

11           (a) The child is in the legal custody or under the supervision or guardianship  
12 of an agency.

13           (b) The birth parent who is a party to the agreement has agreed to voluntarily  
14 consent to the termination of his or her parental rights under s. 48.41 or not to contest  
15 an involuntary termination of parental rights under s. 48.415, except that the  
16 condition under this paragraph is not met if the agreement to voluntarily consent to  
17 or not to contest the termination of parental rights is made after grounds for  
18 termination of parental rights are found under s. 48.424.

19           (c) The child, if 12 years of age or over, consents to the terms of the agreement.

20           **(3) PROVISIONS OF POSTTERMINATION CONTACT AGREEMENT.** A posttermination  
21 contact agreement shall contain all of the following provisions:

22           (a) An acknowledgement by all birth relatives who are parties to the agreement  
23 that the termination of parental rights to and adoption of the child are irrevocable  
24 and that failure by a party to comply with the agreement is not grounds to revoke the  
25 termination of parental rights or adoption.

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1           (b) An acknowledgement by the proposed adoptive parents or, if at the time the  
2 agreement is entered into no proposed adoptive parent has been identified, the  
3 agency having guardianship, legal custody, or supervision of the child that the  
4 agreement is enforceable by any person who is permitted posttermination visitation,  
5 contact, communication, or sharing of information under the agreement.

6           (c) A statement by all parties to the agreement that the agreement was entered  
7 into voluntarily and with understanding of the terms of the agreement, that no  
8 promises or threats were made to coerce any person into entering into the agreement,  
9 and that the parties have not relied on any representations other than those  
10 contained in the agreement.

11           **(4) APPROVAL OF GRANTING POSTTERMINATION CONTACT AGREEMENT.** At the time a  
12 termination of parental rights order is granted, a court may approve a  
13 posttermination contact agreement if all of the following conditions are met:

14           (a) The child and the birth parent meet the conditions specified in sub. (2) (a)  
15 to (c).

16           (b) The agreement contains the provisions specified in sub. (3) (a) to (c).

17           (c) The agreement is signed by all parties to the agreement including the birth  
18 parent and child, if 12 years of age or over. If a birth parent who is under 12 years  
19 of age or other birth relative who is a child is to be granted posttermination visitation,  
20 contact, communication, or sharing of information under the agreement, the parent,  
21 guardian, or legal custodian of the birth relative shall sign the agreement on behalf  
22 of the birth relative.

23           (d) The agency having guardianship, legal custody, or supervision of the child  
24 or the child's guardian ad litem files the agreement with the court. If the agency files  
25 the agreement, the agency shall comply with this paragraph by including in the court

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1 report under s. 48.425 (1) the statement under s. 48.425 (1) (h) and attaching the  
2 agreement to the court report.

3 (e) The court addresses all parties to the agreement and determines by clear  
4 and convincing evidence that the agreement was entered into voluntarily and with  
5 understanding of the terms of the agreement, that no promises or threats were made  
6 to coerce any person into entering into the agreement, and that the parties have not  
7 relied on any representations other than those contained in the agreement.

8 (f) The agency having guardianship, legal custody, or supervision of the child  
9 and the child's guardian ad litem submit to the court recommendations concerning  
10 the granting of posttermination visitation, contact, communication, or sharing of  
11 information as provided for in the agreement.

12 (g) The court determines by clear and convincing evidence that granting  
13 posttermination visitation, contact, communication, or sharing of information as  
14 provided for in the agreement would be in the best interests of the child. In  
15 determining whether granting posttermination visitation, contact, communication,  
16 or sharing of information as provided for in the agreement would be in the best  
17 interests of the child, the court shall consider all of the following factors:

18 1. Whether the child has substantial relationships with the person who would  
19 have visitation, contact, communication, or sharing of information under the  
20 agreement, and whether it would be harmful to the child not to preserve those  
21 relationships.

22 2. Any special needs of the child and how those special needs would be affected  
23 by visitation, contact, communication, or sharing of information as provided for in  
24 the agreement.



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1           3. The specific terms of the agreement and the likelihood that the parties will  
2 cooperate in complying with the agreement.

3           4. The recommendations of the agency having guardianship, legal custody, or  
4 supervision of the child and the child's guardian ad litem.

5           5. Any other factors that are relevant to the best interests of the child.

6           **(5) LATER-IDENTIFIED PROPOSED ADOPTIVE PARENTS.** If the child who is the subject  
7 of a posttermination contact agreement is placed for adoption in the home of a  
8 proposed adoptive parent who was not identified at the time the agreement was  
9 entered into, that posttermination contact agreement shall be binding on the  
10 proposed adoptive parent unless terminated or modified under sub. (7).

11           **(6) ENFORCEMENT OF POSTTERMINATION CONTACT AGREEMENT.** (a) A  
12 posttermination contact agreement is enforceable only if the agreement is approved  
13 by the court under sub. (4). Any party to an approved posttermination contact  
14 agreement may petition the court that approved the agreement for specific  
15 performance of the agreement. The petition shall allege facts sufficient to show that  
16 a person who is bound by the agreement is not in compliance with the agreement,  
17 that enforcement of the agreement is in the best interests of the child in light of the  
18 factors specified in sub. (4) (g), and that the petitioner, before filing the petition,  
19 participated, or attempted to participate, in good faith in mediation or other  
20 appropriate dispute resolution proceedings to resolve the dispute giving rise to the  
21 filing of the petition.

22           (b) The court shall set a date and time for a hearing on a petition filed under  
23 par. (a) and shall provide notice of the hearing to the petitioner and to all other  
24 parties to the approved posttermination contact agreement and the agency that had  
25 guardianship, legal custody, or supervision of the child before the termination of

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1 parental rights. The hearing shall take place on a date that allows the persons  
2 notified of the hearing a reasonable time to prepare, but is no more than 30 days after  
3 the filing of the petition.

4 (c) If the court finds by clear and convincing evidence that any person bound  
5 by an approved posttermination contact agreement is not in compliance with the  
6 agreement, that enforcement of the agreement is in the best interests of the child in  
7 light of the factors specified in sub. (4) (g), and that the petitioner, before filing the  
8 petition, participated, or attempted to participate, in good faith in mediation or other  
9 appropriate dispute resolution proceedings to resolve the dispute giving rise to the  
10 filing of the petition, the court shall issue an order requiring specific performance of  
11 the agreement. An order for specific performance shall be the sole remedy for any  
12 noncompliance with the agreement.

13 (d) A court may not award damages, costs, or attorney fees or revoke a  
14 termination of parental rights order or an order of adoption because a party to a  
15 posttermination contact agreement fails to comply with the agreement.

16 **(7) TERMINATION OR MODIFICATION OF POSTTERMINATION CONTACT AGREEMENT.** (a)  
17 The parties to an approved posttermination contact agreement may agree to  
18 terminate or modify the agreement. If the parties agree to terminate or modify the  
19 agreement and if the child, if 12 years of age or over, consents to the termination or  
20 modification, the parties shall sign and file with the court that approved the  
21 agreement the modified agreement or a stipulation terminating the agreement. If,  
22 after reviewing the stipulation or modified agreement, the court finds by clear and  
23 convincing evidence that termination or modification of the agreement would be in  
24 the best interests of the child in light of the factors specified in sub. (4) (g), the court  
25 shall approve the termination or modification of the agreement.

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1           (b) 1. Any party to an approved posttermination contract agreement may  
2           petition the court that approved the agreement to terminate or modify the  
3           agreement. The petition shall allege facts sufficient to show that termination or  
4           modification of the agreement would be in the best interests of the child in light of  
5           the factors specified in sub. (4) (g), or that there has been a substantial change in  
6           circumstances since the entry of the last order affecting the agreement, and that the  
7           petitioner, before filing the petition, participated, or attempted to participate, in good  
8           faith in mediation or other appropriate dispute resolution proceedings to resolve the  
9           issue giving rise to the filing of the petition.

10           2. The court shall set a date and time for a hearing on a petition under subd.  
11           1. and shall provide notice of the hearing to the petitioner and to all other parties to  
12           the approved posttermination contact agreement and the agency that had  
13           guardianship, legal custody, or supervision of the child before the termination of  
14           parental rights. The hearing shall take place on a date that allows the persons  
15           notified of the hearing a reasonable time to prepare, but is no more than 30 days after  
16           the filing of the petition.

17           3. Notwithstanding s. 48.01 (1) (intro.), the court may terminate or modify the  
18           approved posttermination contact agreement if the court finds by clear and  
19           convincing evidence that termination or modification of the agreement would be in  
20           the best interests of the child in light of the factors specified in sub. (4) (g), or that  
21           there has been a substantial change in circumstances since the entry of the last order  
22           affecting the agreement, and that the petitioner, before filing the petition,  
23           participated, or attempted to participate, in good faith in mediation or other  
24           appropriate dispute resolution proceedings to resolve the issue giving rise to the  
25           filing of the petition. An order to modify an approved posttermination contact

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1 agreement may limit, restrict, condition, or decrease visitation, contact,  
2 communication, or sharing of information between the child and a birth relative of  
3 the child, but may not expand, enlarge, or increase that visitation, contact,  
4 communication, or sharing of information or place any new obligation on the  
5 adoptive parent or agency having guardianship, legal custody, or supervision of the  
6 child.

7 **SECTION 6.** 48.43 (2) (d) of the statutes is created to read:

8 48.43 (2) (d) A court may approve a posttermination contact agreement under  
9 s. 48.429.

10 **SECTION 7.** 48.92 (2) of the statutes is amended to read:

11 48.92 (2) After the order of adoption is entered the relationship of parent and  
12 child between the adopted person and the adopted person's birth parents and the  
13 relationship between the adopted person and all persons whose relationship to the  
14 adopted person is derived through those birth parents shall be completely altered  
15 and all the rights, duties, and other legal consequences of those relationships shall  
16 cease to exist, unless the birth parent is the spouse of the adoptive parent, in which  
17 case those relationships shall be completely altered and those rights, duties, and  
18 other legal consequences shall cease to exist only with respect to the birth parent who  
19 is not the spouse of the adoptive parent and all persons whose relationship to the  
20 adopted person is derived through that birth parent. Notwithstanding the extinction  
21 of all parental rights under this subsection, a court may approve a posttermination  
22 contact agreement under s. 48.429 or order reasonable visitation under s. 48.925.

23 **SECTION 8.** 48.93 (1d) of the statutes is amended to read:

24 48.93 (1d) All records and papers pertaining to an adoption proceeding shall  
25 be kept in a separate locked file and may not be disclosed except under sub. (1g) or,

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1 (1r), or (2) (b), s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9., or 48.57 (1) (j), or by order  
2 of the court for good cause shown.

3 **SECTION 9.** 48.93 (2) of the statutes is renumbered 48.93 (2) (b) and amended  
4 to read:

5 48.93 (2) (b) All correspondence and papers, relating to the investigation,  
6 which that are not a part of the court record, except those in the custody of agencies  
7 authorized to place children for adoption, shall be transferred to the department and  
8 placed in its closed files.

9 **SECTION 10.** 48.93 (2) (a) of the statutes is created to read:

10 48.93 (2) (a) A proposed adoptive parent whose home is the subject of an  
11 investigation under s. 48.837 (1r) (c) or (4) (c) or 48.88 (2) (a) may request the agency  
12 conducting the investigation to disclose its report of the investigation to any other  
13 agency authorized to place children for adoption, to the state adoption information  
14 exchange under s. 48.55, or to the state adoption center under s. 48.55. Within 10  
15 days after receipt of the request, the agency shall disclose the report to the person  
16 named in the request.

17 **SECTION 11. Initial applicability.**

18 (1) POSTTERMINATION CONTACT AGREEMENTS. The treatment of sections 48.425 (1)  
19 (h), 48.426 (3) (c), 48.428 (6) (a) and (b), 48.429, 48.43 (2) (d), and 48.92 (2) of the  
20 statutes first applies to a termination of parental rights petition filed on the effective  
21 date of this subsection.

22 (END)