

2005 Assembly Bill 521

Date of enactment: April 10, 2006  
Date of publication\*: April 20, 2006

## 2005 WISCONSIN ACT 293

AN ACT *to renumber* 48.025 (3); *to renumber and amend* 48.025 (2), 48.41 (2) (b), 48.42 (2m), 48.423 and 48.43 (6); *to amend* 46.03 (7) (bm), 48.025 (1), 48.27 (3) (b) 1. a., 48.27 (5), 48.295 (1), 48.368 (1), 48.415 (2) (a) 3., 48.415 (6) (a) and (b), 48.415 (10) (a), 48.415 (10) (b), 48.42 (1) (a), 48.42 (2) (b) (intro.), 48.42 (2) (b) 1., 48.42 (3) (a), 48.42 (4) (a), 48.422 (6) (a), 48.64 (4) (c), 48.72, 48.78 (2) (a), 48.825 (5), 48.833, 48.837 (1), 48.837 (4) (c), 48.837 (4) (e), 48.839 (2) (b), 48.839 (2) (c), 48.91 (2), 48.913 (1) (c), (i) and (m), 808.04 (7), 808.04 (7m), 808.04 (8), 809.82 (2) (b), 938.27 (3) (b) 1. a., 938.27 (5), 938.78 (2) (a) and 977.07 (1) (c); and *to create* 48.025 (2) (b), 48.025 (2) (d), 48.025 (3) (a), 48.025 (3) (c) and (d), 48.025 (5), 48.025 (6), 48.235 (1) (g), 48.235 (5m), 48.40 (1r), 48.41 (2) (b) 2., 48.42 (1g), 48.42 (2) (bm), 48.42 (2m) (b), 48.42 (4) (b) 1m., 48.42 (5), 48.423 (2), 48.43 (6) (b) and (c), 48.43 (6m), 48.48 (17) (bm), 48.57 (2m), 48.825 (3) (c), 48.825 (3m), 48.837 (1m), 48.837 (2) (d), 48.837 (4) (cm), 48.84, 809.107 (5) (am) and 938.57 (2m) of the statutes; **relating to:** termination of parental rights and adoption, granting rule-making authority, and providing a penalty.

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

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

46.03 (7) (bm) Maintain a file containing records of artificial inseminations under s. 891.40 and records of declarations of paternal interest under s. 48.025, and of statements acknowledging paternity under s. 69.15 (3) (b). The department shall may release these those records, declarations, and statements only upon an order of the court except that the department may use nonidentifying information concerning artificial inseminations for the purpose of compiling statistics and except that records relating to declarations of paternal interest shall be released as provided in s. 48.025 (3) (b) and (c), and statements acknowledging paternity shall be released without a court order to the department of workforce development or a county child support agency under s.

59.53 (5) ~~without a court order~~ upon the request of the that department of workforce development or a or county child support agency ~~under s. 59.53 (5)~~ pursuant to the program responsibilities under s. 49.22 or by to any other person with a direct and tangible interest in the ~~record~~ statement.

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

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

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

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the birth of the child or within 14 days after the birth of the child, except that a man who receives a notice under s. 48.42 (1g) (b) may file a declaration within 21 days after the date on which the notice was mailed. This paragraph does not apply to a declaration filed before the effective date of this paragraph .... [revisor inserts date].

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

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

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

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

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

**SECTION 8.** 48.025 (3) (c) and (d) of the statutes are created to read:

48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13 or under a substantially similar law of another state or a person authorized to file a petition under s. 48.25, 48.42, 48.837, or 938.25 or under a substantially similar law of another state may request the department to search its files to determine whether a person who may be the father of the child who is the subject

of the proceeding has filed a declaration under this section. If the department has on file a declaration of paternal interest in matters affecting the child, the department shall issue to the requester a copy of the declaration. If the department does not have on file a declaration of paternal interest in matters affecting the child, the department shall issue to the requester a statement that no declaration could be located. The department may require a person who requests a search under this paragraph to pay a reasonable fee that is sufficient to defray the costs to the department of maintaining its file of declarations and publicizing information relating to declarations of paternal interest under this section.

(d) Any person who obtains any information under this subsection may use or disclose that information only for the purposes of a proceeding under s. 48.13, 48.133, 48.14, or 938.13 or under a substantially similar law of another state and may not use or disclose that information for any other purpose except by order of the court for good cause shown.

**SECTION 9.** 48.025 (5) of the statutes is created to read:

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

1. That a person claiming to be the father of a nonmarital child may affirmatively protect his parental rights by filing a declaration of interest under this section.
2. The procedures for filing a declaration of interest.
3. The consequences of filing a declaration of interest.
4. The consequences of not filing a declaration of interest.

(b) The department may publicize the information under par. (a) by posting the information on the Internet, by creating a pamphlet for use by schools and health care providers, and by requiring agencies that provide services under contract with the department to provide the information to clients.

**SECTION 10.** 48.025 (6) of the statutes is created to read:

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

(b) Except as permitted under sub. (3), any person who intentionally obtains, uses, or discloses information that is confidential under this section may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.

**SECTION 11.** 48.235 (1) (g) of the statutes is created to read:

48.235 (1) (g) The court shall appoint a guardian ad litem for a parent who is the subject of a termination of

parental rights proceeding, if any assessment or examination of a parent that is ordered under s. 48.295 (1) shows that the parent is not competent to participate in the proceeding or to assist his or her counsel or the court in protecting the parent's rights in the proceeding.

**SECTION 12.** 48.235 (5m) of the statutes is created to read:

**48.235 (5m) MATTERS INVOLVING CONTESTED TERMINATION OF PARENTAL RIGHTS PROCEEDINGS.** (a) In any termination of parental rights proceeding involving a child who has been found to be in need of protection or services and whose parent is contesting the termination of his or her parental rights, a guardian ad litem for a parent who has been appointed under sub. (1) (g) shall provide information to the court relating to the parent's competency to participate in the proceeding, and shall also provide assistance to the court and the parent's adversary counsel in protecting the parent's rights in the proceeding.

(b) The guardian ad litem may not participate in the proceeding as a party, and may not call witnesses, provide opening statements or closing arguments, or participate in any activity at trial that is required to be performed by the parent's adversary counsel.

**SECTION 13.** 48.27 (3) (b) 1. a. of the statutes is amended to read:

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

**SECTION 14.** 48.27 (5) of the statutes is amended to read:

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

**SECTION 15.** 48.295 (1) of the statutes is amended to read:

48.295 (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant ~~an a physical, psychological, mental, or developmental~~ examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental, or developmental condition may be considered. The court may also order ~~an a physical, psychological, mental, or developmental~~ examina-

tion or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) of a parent, guardian, or legal custodian whose ability to care for a child is at issue before the court or of an expectant mother whose ability to control her use of alcohol beverages, controlled substances, or controlled substance analogs is at issue before the court. The court shall hear any objections by the child, or the child's parents, guardian, or legal custodian to the request for such an examination or assessment before ordering the examination or assessment. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

**SECTION 16.** 48.368 (1) of the statutes is amended to read:

**48.368 Continuation of dispositional orders. (1)**

If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed during the year in which a dispositional order under s. 48.355 ~~or~~ an extension order under s. 48.365, a voluntary agreement for placement of the child under s. 48.63, or a guardianship order under s. 48.977 or ch. 880 is in effect, the dispositional or extension order, voluntary agreement, or guardianship order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

**SECTION 17.** 48.40 (1r) of the statutes is created to read:

48.40 (1r) "Parent" has the meaning given in s. 48.02 (13), except that for purposes of filing a petition seeking the involuntary termination of parental rights under s. 48.415 to a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not been established, of finding grounds under s. 48.415 for the involuntary termination of parental rights to such a child, and of terminating the parental rights to such a child on a ground specified in s. 48.415, "parent" includes a person who may be the parent of such a child.

**SECTION 18.** 48.41 (2) (b) of the statutes is renumbered 48.41 (2) (b) (intro.) and amended to read:

48.41 (2) (b) (intro.) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may do any of the following:

1. Accept ~~accept~~ the written consent of the parent given before an embassy or consul official, a military judge, or a judge of any court of record in another county or state or a foreign jurisdiction. This written consent shall be accompanied by the signed findings of the embassy or consul official or judge who accepted the parent's consent. These findings shall recite that the

embassy or consul official or judge or an attorney who represents any of the parties questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

**SECTION 19.** 48.41 (2) (b) 2. of the statutes is created to read:

48.41 (2) (b) 2. On request of the parent, unless good cause to the contrary is shown, admit testimony on the record by telephone or live audiovisual means as prescribed in s. 807.13 (2).

**SECTION 20.** 48.415 (2) (a) 3. of the statutes is amended to read:

48.415 (2) (a) 3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the ~~12-month~~ 9-month period following the fact-finding hearing under s. 48.424.

**SECTION 21.** 48.415 (6) (a) and (b) of the statutes are amended to read:

48.415 (6) (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have ~~never~~ not had a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ~~ever~~ expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ~~ever~~ expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

**SECTION 22.** 48.415 (10) (a) of the statutes is amended to read:

48.415 (10) (a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) or (10); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child.

**SECTION 23.** 48.415 (10) (b) of the statutes is amended to read:

48.415 (10) (b) That, within 3 years prior to the date the court adjudged the child ~~who is the subject of the petition~~ to be in need of protection or services as specified in

par. (a) or, in the case of a child born after the filing of a petition as specified in par. (a), within 3 years prior to the date of birth of the child, a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

**SECTION 24.** 48.42 (1) (a) of the statutes is amended to read:

48.42 (1) (a) The name, birth date or anticipated birth date, and address of the child.

**SECTION 25.** 48.42 (1g) of the statutes is created to read:

48.42 (1g) AFFIDAVIT. (a) Except as provided in par. (c), if the petition is filed by a person or agency other than the district attorney, corporation counsel, or other appropriate official under s. 48.09; if the petition seeks to terminate the parental rights of a person who may be the father of a nonmarital child who is under one year of age at the time the petition is filed, who is not adopted or whose parents do not subsequently intermarry under s. 767.60, and whose paternity has not been established; and if the mother of the child has voluntarily consented to or seeks to voluntarily consent to the termination of her parental rights to the child, the petitioner may file with the petition an affidavit signed by the mother that includes all of the following:

1. A statement that the mother has voluntarily consented to or seeks to voluntarily consent to the termination of her parental rights to the child.
2. A statement acknowledging that the mother has been asked to identify the father of the child.
3. A statement that the mother knows and is identifying the father or that she does not know the identity of the father.
4. A statement identifying any man who has lived in a familial relationship with the child and who may be the father of the child.
5. If the mother states that she knows and is identifying the father under subd. 3. or 4., the father's name, age, and last-known mailing address, and the last-known mailing address of the father's employer.
6. If the mother states that she does not know the identity of the father, an explanation of why she is unable to identify him and a physical description of the father.
7. A statement that the mother has been informed and understands that if she misidentifies the father, she is permanently barred from attacking the termination of the father's or her parental rights on the basis that the father was not correctly identified.
8. A statement that the mother understands that she may be prosecuted under s. 946.32 (2) for false swearing if she makes a false statement that she does not believe is true in the affidavit under this paragraph.
9. A statement that the mother has reviewed and understands the affidavit, the name of the person who explained the affidavit and the consequences of signing



the affidavit to her, and a statement that the mother is signing the affidavit voluntarily.

(b) The petitioner shall notify any man identified in the affidavit under par. (a) as an alleged father of his right to file a declaration of paternal interest under s. 48.025 before the birth of the child, within 14 days after the birth of the child, or within 21 days after the date on which the notice is mailed, whichever is later; of the birth date or anticipated birth date of the child; and of the consequences of filing or not filing a declaration of paternal interest. The petitioner shall include with the notice a copy of the form required to file a declaration of paternal interest under s. 48.025. The notice shall be sent by certified mail to the last-known address of the alleged father.

(c) If an affidavit under par. (a) is not filed with the petition, notice shall be given to an alleged father under sub. (2).

**SECTION 26.** 48.42 (2) (b) (intro.) of the statutes is amended to read:

48.42 (2) (b) (intro.) If Except as provided in par. (bm), if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not been established:

**SECTION 27.** 48.42 (2) (b) 1. of the statutes is amended to read:

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

**SECTION 28.** 48.42 (2) (bm) of the statutes is created to read:

48.42 (2) (bm) If the child is a nonmarital child who is under one year of age at the time the petition is filed and who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not been established and if an affidavit under sub. (1g) (a) is filed with the petition:

1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025 before the birth of the child, within 14 days after the birth of the child, or within 21 days after a notice under sub. (1g) (b) is mailed, whichever is later.

2. A person who has lived in a familial relationship with the child and who may be the father of the child.

**SECTION 29.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and amended to read:

48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this ~~subsection~~ paragraph, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this ~~subsection~~ paragraph has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this ~~subsection~~ paragraph for conduct which may have

led to the child's conception. A person who under this ~~subsection~~ paragraph is not given notice does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations. This ~~subsection~~ paragraph does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

**SECTION 30.** 48.42 (2m) (b) of the statutes is created to read:

48.42 (2m) (b) *Parent of nonmarital child.* A person who may be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not been established, by virtue of the fact that he has engaged in sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a termination of parental rights proceeding concerning the child may occur, and has the duty to protect his own rights and interests. He is therefore entitled to actual notice of such a proceeding only as provided in sub. (2) (b) or (bm). A person who is not entitled to notice under sub. (2) (b) or (bm) does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

**SECTION 31.** 48.42 (3) (a) of the statutes is amended to read:

48.42 (3) (a) Contain the name and birth date or anticipated birth date of the child, and the nature, location, date and time of the initial hearing.

**SECTION 32.** 48.42 (4) (a) of the statutes is amended to read:

48.42 (4) (a) *Personal service.* ~~A~~ Except as provided in this paragraph and par. (b), a copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 7 days before the date of the hearing, ~~except that service.~~ Service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

**SECTION 33.** 48.42 (4) (b) 1m. of the statutes is created to read:

48.42 (4) (b) 1m. If the child's custody was relinquished under s. 48.195, service to the parents of the child may be made by publication of the notice under subd. 4.

**SECTION 34.** 48.42 (5) of the statutes is created to read:

48.42 (5) PENALTY. Any person who knowingly and willfully makes or causes to be made any false statement or representation of a material fact in the course of a proceeding under this section with an intent to deceive or mislead the court for the purpose of preventing a person

who is entitled to receive notice of a proceeding under this section from receiving notice may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. It is not a violation of this subsection for a person to refuse to make a statement or representation of material fact in the course of a proceeding under this section for the purpose of preventing a person who is entitled to receive notice of a proceeding under this section from receiving notice if, at the time of the refusal, the person stated that he or she feared that making such a statement or representation would place the person or another person at risk of domestic abuse, as defined in s. 813.12 (1) (am), or abuse, as defined in s. 813.122 (1) (a), and if the person proves that he or she refused to make such a statement or representation because of a recent overt act, attempt, or threat that caused him or her reasonably to believe that refusing to make such a statement or representation was the only means of preventing domestic abuse, as defined in s. 813.12 (1) (am), or abuse, as defined in s. 813.122 (1) (a), to himself or herself or to another.

**SECTION 35.** 48.422 (6) (a) of the statutes is amended to read:

48.422 (6) (a) ~~If the child is In the case of~~ a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and ~~for whom~~ paternity has not been established, ~~or for whom a declaration of paternal interest has not been filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g) (b) is mailed,~~ the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

**SECTION 36.** 48.423 of the statutes is renumbered 48.423 (1) and amended to read:

48.423 (1) **RIGHTS TO PATERNITY DETERMINATION.** ~~If a man who alleges that he is the father of the child person appears at the hearing and wishes to contest the termination of his parental rights claims that he is the father of the child,~~ the court shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the ~~man~~ person claiming to be the father of the child of any right to counsel under s. 48.23. The ~~man~~ person claiming to be the father of the child must prove paternity by clear and convincing evidence. A person who establishes his paternity of the child under this section may further participate in the termination of parental rights proceeding only if the person meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2) or (b) or (bm).

**SECTION 37.** 48.423 (2) of the statutes is created to read:

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

(a) 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.

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

(c) 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.

(d) 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.

**SECTION 38.** 48.43 (6) of the statutes is renumbered 48.43 (6) (a) and amended to read:

48.43 (6) (a) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107 and are subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 (1m) and (2). The attorney representing a person during a proceeding under this subchapter shall continue representation of that person by filing a notice of intent to appeal under s. 809.107 (2), unless the attorney has been previously discharged during the proceeding by the person or by the trial court.

**SECTION 39.** 48.43 (6) (b) and (c) of the statutes are created to read:

48.43 (6) (b) The mother of a child who completes an affidavit under s. 48.42 (1g) may not collaterally attack a judgment terminating parental rights on the basis that the father of the child was not correctly identified.

(c) In no event may any person, for any reason, collaterally attack a judgment terminating parental rights more than one year after the date on which the time limit for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided, whichever is later.

**SECTION 40.** 48.43 (6m) of the statutes is created to read:

48.43 (6m) If a person whose parental rights are terminated is present in court when the court grants the order terminating those rights, the court shall provide written notification to the person of the time limits for appeal of

the judgment. The person shall sign the written notification, indicating that he or she has been notified of the time limits for filing an appeal under ss. 808.04 (7m) and 809.107. The person's counsel shall file a copy of the signed, written notification with the court on the date on which the judgment is granted.

**SECTION 41.** 48.48 (17) (bm) of the statutes is created to read:

48.48 (17) (bm) As soon as practicable after learning that a person who is receiving child welfare services under par. (a) from the department has changed his or her county of residence, the department shall provide notice of that change to the county department of the person's new county of residence. The notice shall include a brief, written description of the services offered or provided to the person by the department and the name, telephone number, and address of a person to contact for more information.

**SECTION 42.** 48.57 (2m) of the statutes is created to read:

48.57 (2m) A county department, as soon as practicable after learning that a person who is receiving child welfare services under sub. (1) from the county department has changed his or her county of residence, shall provide notice of that change to the county department of the person's new county of residence or, if that new county of residence is a county having a population of 500,000 or more, the department. The notice shall include a brief, written description of the services offered or provided to the person by the county department and the name, telephone number, and address of a person to contact for more information.

**SECTION 43.** 48.64 (4) (c) of the statutes is amended to read:

48.64 (4) (c) The circuit court for the county where the child is placed dispositional order placing a child in a foster home, treatment foster home, or group home was entered or the voluntary agreement under s. 48.63 so placing a child was made has jurisdiction upon petition of any interested party over a child who is placed in a foster home, treatment foster home, or group home. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home, the foster parent may present relevant evidence at the hearing. The court shall determine the case so as to promote the petitioner has the burden of proving by clear and convincing evidence that the decision or order issued by the agency is not in the best interests of the child.

**SECTION 44.** 48.72 of the statutes is amended to read:

**48.72 Appeal procedure.** Except as provided in s. 48.715 (6) and (7), any person aggrieved by the department's refusal or failure to issue, renew, or continue a license or by any action taken by the department under s.

48.715 has the right to an administrative hearing provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227, the aggrieved person shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department's refusal or failure to issue, renew, or continue a license or the department's action taken under s. 48.715. The department shall hold an administrative hearing under s. 227.44 within 30 days after receipt of the request for the administrative hearing unless the aggrieved person consents to an extension of that time period. Judicial review of the department's decision may be had by any party in the contested case as provided in ch. 227.

**SECTION 45.** 48.78 (2) (a) of the statutes is amended to read:

48.78 (2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m), 48.93, 48.981 (7), 938.51, or 938.78 or by order of the court.

**SECTION 45t.** 48.825 (3) (c) of the statutes is created to read:

48.825 (3) (c) A foster care and adoption resource center funded by this state or a postadoption resource center funded by this state.

**SECTION 46.** 48.825 (3m) of the statutes is created to read:

48.825 (3m) No person may publish by a public medium an advertisement that violates this section. If the owner, agent, or employee of the public medium receives a copy of the license of the person or agency requesting the advertisement that indicates that the person or agency is licensed to provide adoption services in this state, there is a rebuttable presumption that the advertisement does not violate this section.

**SECTION 47.** 48.825 (5) of the statutes is amended to read:

48.825 (5) Any person who violates sub. (2) or (3m) may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

**SECTION 48.** 48.833 of the statutes is amended to read:

**48.833 Placement of children for adoption by the department, county departments, and child welfare agencies.** The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department under s. 48.57 (1) (e) or (hm) or the, or child welfare agency is the guardian of the child or makes the placement at the request of another agency which that is the guardian of the child and if the proposed adoptive parents have com-

pleted the preadoption preparation required under s. 48.84 (1) or the department, county department, or child welfare agency determines that the proposed adoptive parents are not required to complete that preparation. Before placing a child for adoption under this section, the department, county department, or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department, or child welfare agency. When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department, or child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

**SECTION 49.** 48.837 (1) of the statutes is amended to read:

48.837 (1) ADOPTIVE IN-STATE ADOPTIVE PLACEMENT.  
~~A- When the proposed adoptive parent or parents of a child reside in this state and are not relatives of the child,~~ a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a person who is not a relative of the child if the home is licensed as a foster home or treatment foster home under s. 48.62.

**SECTION 50.** 48.837 (1m) of the statutes is created to read:

48.837 (1m) OUT-OF-STATE ADOPTIVE PLACEMENT. Notwithstanding s. 48.988, when the proposed adoptive parent or parents of a child reside outside this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of the proposed adoptive parent or parents, if the home meets the criteria established by the laws of the other state for a preadoptive placement of a child in the home of a nonrelative.

**SECTION 51.** 48.837 (2) (d) of the statutes is created to read:

48.837 (2) (d) That the proposed adoptive parents have completed the preadoption preparation required under s. 48.84 (1) or are not required to complete that preparation.

**SECTION 52.** 48.837 (4) (c) of the statutes is amended to read:

48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the department or a county department under s. 48.57 (1) (e) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested and to report its recommendation to the court at least 5 days before the hear-

ing on the petition. If a licensed child welfare agency has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the child welfare agency in place of the court-ordered report required under this paragraph.

**SECTION 53.** 48.837 (4) (cm) of the statutes is created to read:

48.837 (4) (cm) Shall, when the petition has been filed under sub. (1m), request the appropriate agency in the state where the proposed adoptive parent or parents reside to follow the procedure established by the laws of that state to ensure that the proposed adoptive home meets the criteria for a preadoptive placement of the child in the home of a nonrelative.

**SECTION 54.** 48.837 (4) (e) of the statutes is amended to read:

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

**SECTION 55.** 48.839 (2) (b) of the statutes is amended to read:

48.839 (2) (b) If the guardian files a judgment or order of a court under par. (a), the department shall review the judgment or order. If the department determines that the judgment or order has the effect of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the guardian as an adoptive parent, if a licensed child welfare agency has been identified to provide the services required under sub. (5) ~~and,~~ if the guardian has filed the bond required under sub. (1), and if the guardian has completed the preadoption preparation required under s. 48.84 (1) or the department has determined that the guardian is not required to complete that preparation, the department shall certify to the U.S. immigration and naturalization service that all preadoptive requirements of this state that can be met before the child's arrival in the United States have been met.

**SECTION 56.** 48.839 (2) (c) of the statutes is amended to read:



48.839 (2) (c) If the guardian files an instrument other than a judgment or order of a court under par. (a), the department shall review the instrument. If the department determines that the instrument has the effect under the laws of the foreign jurisdiction of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the adoptive parents, if a licensed child welfare agency has been identified to provide the services required under sub. (5) and, if the guardian has filed the bond required under sub. (1), and if the guardian has completed the preadoption preparation required under s. 48.84 (1) or the department has determined that the guardian is not required to complete that preparation, the department shall certify to the U.S. immigration and naturalization service that all preadoption requirements of this state that can be met prior to the child's arrival in the United States have been met.

**SECTION 57.** 48.84 of the statutes is created to read:

**48.84 Preadoption preparation for proposed adoptive parents.** (1) Before a child may be placed under s. 48.833 for adoption by a proposed adoptive parent who has not previously adopted a child, before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, and before a proposed adoptive parent who has not previously adopted a child may bring a child into this state for adoption under s. 48.839, the proposed adoptive parent shall complete the preadoption preparation required under this section. The preparation shall be provided by a licensed child welfare agency, a licensed private adoption agency, the state adoption information exchange under s. 48.55, the state adoption center under s. 48.55, a state-funded foster care and adoption resource center, or a state-funded postadoption resource center. If the proposed adoptive parent does not reside in this state, he or she may meet this requirement by obtaining equivalent preparation in his or her state of residence.

(2) The department shall promulgate rules establishing the number of hours of preadoption preparation that is required under sub. (1) and the topics covered under that preparation. The preparation shall include training on issues that may confront adoptive parents, in general, and that may confront adoptive parents of special needs children or foreign children.

(3) A proposed adoptive parent who petitions to adopt a child under s. 48.837 or 48.839 shall pay the costs of the preadoption preparation required under sub. (1). The department shall pay the costs of the preadoption preparation required under sub. (1) for a proposed adoptive parent with whom a child is placed under s. 48.833.

**SECTION 58.** 48.91 (2) of the statutes is amended to read:

48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, the court shall establish ~~whether the rights of any persons who have filed dec-~~

~~larations of paternal interest under s. 48.025 have been determined or whether the child's paternity has been acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated in this state or in another jurisdiction. If the court finds that no such determination has been made~~ child's paternity has not been acknowledged or adjudicated, the court shall proceed, prior to any action on the petition for adoption, to attempt to ascertain the paternity of the child and ~~the rights of any person who has filed a declaration under s. 48.025 shall determine the rights of any person who may be the father of the child as provided under s. 48.423. The court may not proceed with the hearing on the petition for adoption unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.~~

**SECTION 59.** 48.913 (1) (c), (i) and (m) of the statutes are amended to read:

48.913 (1) (c) Maternity clothes for the child's birth mother, ~~not to exceed a reasonable in an amount not to exceed \$300.~~

(i) Living expenses of the child's birth mother, in an amount not to exceed \$1,000 \$5,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

(m) A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 \$100 in value.

**SECTION 59x.** 808.04 (7) of the statutes is amended to read:

808.04 (7) An appeal by a party other than the state from a judgment or order granting adoption shall be initiated by filing the notice required by s. 809.30 (2) (b) within 40 days of after the date of entry of the judgment or order appealed from. Notwithstanding s. 809.82 (2) ~~(b)~~ (a), this time period may not be enlarged.

**SECTION 60.** 808.04 (7m) of the statutes is amended to read:

808.04 (7m) An appeal from a judgment or order terminating parental rights or denying termination of parental rights shall be initiated by filing the notice required by s. 809.107 (2) within 30 days after the date of entry of the judgment or order appealed from. Notwithstanding s. 809.82 (2) ~~(b)~~ (a), this time period may not be enlarged unless the judgment or order was entered as a result of a petition under s. 48.415 that was filed by a representative of the public under s. 48.09.

**SECTION 61.** 808.04 (8) of the statutes is amended to read:

808.04 (8) If the record discloses that the judgment or order appealed from was entered after the notice of appeal or intent to appeal was filed, the notice of appeal shall be treated as filed after ~~such that~~ that entry and on the day ~~thereof of the entry.~~

**SECTION 62.** 809.107 (5) (am) of the statutes is created to read:

809.107 (5) (am) *Notice of abandonment of appeal.* If the person who filed a notice of intent to appeal under sub. (2) and requested a transcript and case record under sub. (4) decides not to file a notice of appeal, that person shall notify the person required to be served under sub. (2) of this decision, within 30 days after the service of the transcript and case record under sub. (4).

**SECTION 63d.** 809.82 (2) (b) of the statutes is amended to read:

809.82 (2) (b) Notwithstanding the provisions of par. (a), the time for filing a notice of appeal or cross-appeal of a final judgment or order, other than in an appeal under s. 809.107 of a judgment or order that was entered as a result of a petition under s. 48.415 that was filed by a representative of the public under s. 48.09 or an appeal under s. 809.30 or 809.32, may not be enlarged.

**SECTION 64.** 938.27 (3) (b) 1. a. of the statutes is amended to read:

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

**SECTION 65.** 938.27 (5) of the statutes is amended to read:

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

**SECTION 66.** 938.57 (2m) of the statutes is created to read:

938.57 (2m) A county department, as soon as practicable after learning that a person who is receiving juvenile welfare services under sub. (1) from the county department has changed his or her county of residence, shall provide notice of that change to the county department of the person's new county of residence. The notice shall include a brief, written description of the services offered or provided to the person by the county department and the name, telephone number, and address of a person to contact for more information.

**SECTION 67.** 938.78 (2) (a) of the statutes is amended to read:

938.78 (2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under sub. (3) or s. 938.371, 938.38 (5) (b) or (d) or (5m) (d), ~~or 938.51,~~ or 938.57 (2m) or by order of the court.

**SECTION 68.** 977.07 (1) (c) of the statutes is amended to read:

977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b) and 974.07 (11), except a referral of a child who is entitled to be represented by counsel under s. 48.23 or 938.23, a representative of the

state public defender shall determine indigency. For referrals made under ss. 809.107, 809.30 and 974.06 (3) (b), except a referral of a child who is entitled to be represented by counsel under s. 48.23 or 938.23, the representative of the state public defender may, unless a request for redetermination has been filed under s. 809.30 (2) (d) or the defendant's person's request for representation states that his or her financial circumstances have materially improved, rely upon a determination of indigency made for purposes of trial representation under this section.

#### **SECTION 69. Nonstatutory provisions.**

(1) PREADoption PREPARATION. The department of health and family services shall submit in proposed form the rules required under section 48.84 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this subsection.

#### **SECTION 70. Initial applicability.**

(1) NOTICE OF AND PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The treatment of sections 48.42 (1) (a), (1g), (2) (b) (intro.) and 1. and (bm) and (3) (a), 48.422 (6) (a), 48.837 (4) (e), and 48.91 (2) of the statutes, the renumbering and amendment of sections 48.42 (2m), 48.423, and 48.43 (6) of the statutes, and the creation of sections 48.42 (2m) (b), 48.423 (2), and 48.43 (6) (b) and (c) of the statutes first apply to a termination of parental rights petition filed on the effective date of this subsection.

(2) NOTICE TO COUNTY WHEN PERSON RECEIVING SERVICES CHANGES COUNTY OF RESIDENCE. The treatment of sections 48.48 (17) (bm), 48.57 (2m), 48.78 (2) (a), 938.57 (2m), and 938.78 (2) (a) of the statutes first applies to a person who changes his or her county of residence on the effective date of this subsection.

(3) TERMINATION OF PARENTAL RIGHTS GROUNDS.

(a) The treatment of section 48.415 (2) (a) 3. of the statutes first applies to court orders required to contain the notice under section 48.356 (2) or 938.356 (2) of the statutes granted on the effective date of this subsection.

(b) The treatment of section 48.415 (10) (a) and (b) of the statutes first applies to a petition filed on the effective date of this paragraph for termination of parental rights to a child who was born after the filing of a petition for termination of parental rights to a sibling of the child, but does not preclude consideration of prior orders of a court terminating parental rights with respect to a child who is not the subject of the petition in determining whether to terminate, or to find grounds to terminate, the parental rights of a person under section 48.415 (10) of the statutes, as affected by this act.

(4) TERMINATION OF PARENTAL RIGHTS APPEALS. The treatment of sections 48.43 (6m), 808.04 (7m) and (8), 809.107 (5) (am), and 809.82 (2) (b) of the statutes first applies to judgments or orders granted under section

48.43 of the statutes, as affected by this act, on the effective date of this paragraph.

(5) AGENCY DECISIONS INVOLVING PLACEMENT OF CHILD. The treatment of section 48.64 (4) (c) of the statutes first applies to a decision or order of an agency involving the placement and care of a child made on the effective date of this subsection.

(6) JUDICIAL REVIEW. The treatment of section 48.72 of the statutes first applies to a decision made or action taken by the department of health and family services on the effective date of this subsection.

(7) ADVERTISING RELATING TO ADOPTION. The treatment of section 48.825 (3) (c), (3m), and (5) of the statutes first applies to advertisements published on the effective date of this subsection.

(8) PAYMENT OF BIRTH PARENTS' EXPENSES. The treatment of section 48.913 (1) (c), (i), and (m) of the statutes first applies to the payment of expenses that are incurred on the effective date of this subsection.

(9) PREADOPTON PREPARATION. The treatment of sections 48.833, 48.837 (2) (d), 48.839 (2) (b) and (c), and 48.84 of the statutes first applies to a child placed for adoption under section 48.833 of the statutes, as affected by this act, a petition for adoptive placement of a child

filed under s. 48.837 (2) of the statutes, as affected by this act, or a child brought into this state for purposes of adoption under section 48.839 of the statutes, as affected by this act, on the effective date of this subsection.

**SECTION 71. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) DECLARATION OF PATERNAL INTEREST. The treatment of sections 46.03 (7) (bm), 48.025 (1), (5) and (6), 48.27 (3) (b) 1. a., 48.27 (5), 48.42 (1) (a), (1g), (2) (b) (intro.) and 1. and (bm), and (3) (a), 48.422 (6) (a), 48.837 (4) (e), 48.91 (2), 938.27 (3) (b) 1. a. and (5) of the statutes, the renumbering of section 48.025 (3) of the statutes, the renumbering and amendment of sections 48.025 (2), 48.42 (2m), 48.423, and 48.43 (6) of the statutes, and the creation of sections 48.025 (2) (b) and (d) and (3) (a), (c), and (d), 48.42 (2m) (b), 48.423 (2), and 48.43 (6) (b) and (c) of the statutes and SECTION 70 (1) of this act take effect on the first day of the 3rd month beginning after publication.

(2) PREADOPTON PREPARATION. The treatment of sections 48.833, 48.837 (2) (d), 48.839 (2) (b) and (c), and 48.84 of the statutes and SECTION 70 (9) of this act take effect on the first day of the 12th month beginning after publication.

