



**SENATE SUBSTITUTE AMENDMENT 2,
TO 2009 ASSEMBLY BILL 214**

April 19, 2010 – Offered by Senator DARLING.

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.

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 substitute amendment 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 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; and 2) the child, if 12 years of age or over, consents to the terms of the agreement.

The substitute amendment permits any party to the TPR proceeding or any birth relative of the child to propose a posttermination contact agreement if the birth parent agrees to voluntarily consent to the TPR or not to contest an involuntary TPR before grounds for TPR are found. If those circumstances do not apply, only the proposed adoptive parents, the agency, the district attorney, corporation counsel, or other official who filed the TPR petition, the juvenile court, or, in the case of an Indian child, the Indian child’s tribe may propose a posttermination contact 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, subject to certain exceptions under current law, 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 substitute amendment; 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, the child’s guardian ad litem, or, in the case of an Indian child, the tribal child welfare department of the Indian child’s tribe 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, the child's guardian ad litem, and, in the case of an Indian child, the Indian child's tribe 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.

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, the child's guardian ad litem, and, in the case of an Indian child, the Indian child's tribe; 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 substitute amendment requires the juvenile court, in evaluating that factor, to consider the terms of any posttermination contact agreement under the substitute amendment 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 formal or informal 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 formal or informal 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 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 formal or informal 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 substitute amendment 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, unless within those ten days the agency petitions the juvenile court for an order permitting the agency not to disclose the report, to restrict the information to be disclosed, or to defer disclosure of the report to a later date or for such other appropriate relief as the agency may request and the juvenile court finds good cause for granting the relief requested.

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 or tribal child welfare department shall attach a copy of the agreement
5 to the report.

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

2 48.426 **(3)** (c) Whether the child has substantial relationships with the parent
3 or other family members, and whether it would be harmful to the child to sever ~~these~~
4 those relationships. In determining whether it would be harmful to the child to sever
5 those relationships, the court shall consider the terms of any posttermination contact
6 agreement that has been entered into under s. 48.429 with respect to the child and
7 may consider any other agreement by a proposed adoptive parent to permit contact
8 between the child and the parent or other family members after adoption of the child.

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

11 48.428 **(6)** ~~Except as provided in par. (b), the~~ The court may order or prohibit
12 ~~visitation by grant posttermination contact privileges under s. 48.429 to a birth~~
13 ~~parent~~ relative of a child placed in sustaining care.

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

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

16 **48.429 Posttermination contact privileges. (1) DEFINITIONS.** In this
17 section:

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

20 (b) “Birth relative” means a relative, as defined in s. 48.02 (15), by blood or
21 marriage, and, in the case of an Indian child, also includes an extended family
22 member, as defined in s. 48.028 (2) (am).

23 (c) “Posttermination contact agreement” means an agreement between a
24 proposed adoptive parent of a child or, if at the time the agreement is entered into
25 no proposed adoptive parent has been identified, the agency having guardianship,

1 legal custody, or supervision of the child and a birth relative of the child that provides
2 for any of the following after termination of parental rights to the child:

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

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

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

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

10 **(2) POSTTERMINATION CONTACT AGREEMENTS; WHEN PERMITTED.** (a) Subject to par.
11 (b), at any time before a termination of parental rights order is granted, a
12 posttermination contact agreement may be entered into between the proposed
13 adoptive parents of a child or, if at the time the agreement is entered into no proposed
14 adoptive parent has been identified, the agency having guardianship, legal custody,
15 or supervision of the child and a birth relative of the child if the child is in the legal
16 custody or under the supervision or guardianship of an agency and the child, if 12
17 years of age or over, consents to the terms of the agreement.

18 (b) If the birth parent who is a party to the agreement agrees to voluntarily
19 consent to the termination of his or her parental rights under s. 48.41 or not to contest
20 an involuntary termination of parental rights under s. 48.415 before grounds for
21 termination of parental rights are found under s. 48.424, any party to the
22 termination of parental rights proceeding or any birth relative of the child may
23 propose a posttermination contact agreement. If those circumstances do not apply,
24 only the proposed adoptive parents; the agency having guardianship, legal custody,
25 or supervision of the child; the district attorney, corporation counsel, or other

1 appropriate official designated under s. 48.09 who filed the petition; the court, on its
2 own motion; or, in the case of an Indian child, the Indian child's tribe, may propose
3 a posttermination contact agreement.

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

6 (a) An acknowledgement by all birth relatives who are parties to the agreement
7 that, subject to ss. 48.028 (5) (c) and (6) and 48.46 (1m) and (2), the termination of
8 parental rights to and adoption of the child are irrevocable and that failure by a party
9 to comply with the agreement is not grounds to revoke the termination of parental
10 rights or adoption.

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

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

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

24 (a) The child and the birth parent meet the conditions specified in sub. (2).

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

1 (c) The agreement is signed by all parties to the agreement including the birth
2 parent and child, if 12 years of age or over. If a birth parent who is under 12 years
3 of age or other birth relative who is a child is to be granted posttermination visitation,
4 contact, communication, or sharing of information under the agreement, the parent,
5 guardian, legal custodian, or Indian custodian of the birth parent or other birth
6 relative shall sign the agreement on behalf of the birth parent or other birth relative.

7 (d) The agency having guardianship, legal custody, or supervision of the child,
8 the child's guardian ad litem or, in the case of an Indian child, the tribal child welfare
9 department of the Indian child's tribe files the agreement with the court. If the
10 agency or tribal child welfare department files the agreement, the agency or tribal
11 child welfare department shall comply with this paragraph by including in the court
12 report under s. 48.425 (1) the statement under s. 48.425 (1) (h) and attaching the
13 agreement to the court report.

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

19 (f) The agency having guardianship, legal custody, or supervision of the child,
20 the child's guardian ad litem, and, in the case of an Indian child, the Indian child's
21 tribe submit to the court recommendations concerning the granting of
22 posttermination visitation, contact, communication, or sharing of information as
23 provided for in the agreement.

24 (g) The court determines by clear and convincing evidence that granting
25 posttermination visitation, contact, communication, or sharing of information as

1 provided for in the agreement would be in the best interests of the child. In
2 determining whether granting posttermination visitation, contact, communication,
3 or sharing of information as provided for in the agreement would be in the best
4 interests of the child, the court shall consider all of the following factors:

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

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

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

14 4. The recommendations of the agency having guardianship, legal custody, or
15 supervision of the child, the child's guardian ad litem, and, in the case of an Indian
16 child, the Indian child's tribe.

17 5. Any other factors that are relevant to the best interests of the child under
18 s. 48.01 (1) (intro.) or, in the case of an Indian child, the best interests of the Indian
19 child under s. 48.01 (2).

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

1 **(6)** ENFORCEMENT OF POSTTERMINATION CONTACT AGREEMENT. (a) A
2 posttermination contact agreement is enforceable only if the agreement is approved
3 by the court under sub. (4). Any party to an approved posttermination contact
4 agreement may petition the court that approved the agreement for specific
5 performance of the agreement. The petition shall allege facts sufficient to show that
6 a person who is bound by the agreement is not in compliance with the agreement,
7 that enforcement of the agreement is in the best interests of the child in light of the
8 factors specified in sub. (4) (g), and that the petitioner, before filing the petition,
9 participated, or attempted to participate, in good faith in formal or informal
10 mediation or other appropriate dispute resolution proceedings to resolve the dispute
11 giving rise to the filing of the petition.

12 (b) The court shall set a date and time for a hearing on a petition filed under
13 par. (a) and shall provide notice of the hearing to the petitioner and to all other
14 parties to the approved posttermination contact agreement, the agency that had
15 guardianship, legal custody, or supervision of the child before the termination of
16 parental rights, and, in the case of an Indian child, the Indian child's tribe. The
17 hearing shall take place on a date that allows the persons notified of the hearing a
18 reasonable time to prepare, but is no more than 30 days after the filing of the petition.

19 (c) If the court finds by clear and convincing evidence that any person bound
20 by an approved posttermination contact agreement is not in compliance with the
21 agreement; that enforcement of the agreement is in the best interests of the child in
22 light of the factors specified in sub. (4) (g); and that the petitioner, before filing the
23 petition, participated, or attempted to participate, in good faith in formal or informal
24 mediation or other appropriate dispute resolution proceedings to resolve the dispute
25 giving rise to the filing of the petition, the court shall issue an order requiring specific

1 performance of the agreement. An order for specific performance shall be the sole
2 remedy for any noncompliance with the agreement.

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

6 **(7) TERMINATION OR MODIFICATION OF POSTTERMINATION CONTACT AGREEMENT.** (a)
7 The parties to an approved posttermination contact agreement may agree to
8 terminate or modify the agreement. If the parties agree to terminate or modify the
9 agreement and if the child, if 12 years of age or over, consents to the termination or
10 modification, the parties shall sign and file with the court that approved the
11 agreement the modified agreement or a stipulation terminating the agreement. If,
12 after reviewing the stipulation or modified agreement, the court finds by clear and
13 convincing evidence that termination or modification of the agreement would be in
14 the best interests of the child in light of the factors specified in sub. (4) (g), the court
15 shall, without a hearing, approve the termination or modification of the agreement.

16 (b) 1. Any party to an approved posttermination contact agreement may
17 petition the court that approved the agreement to terminate or modify the
18 agreement. The petition shall allege facts sufficient to show that termination or
19 modification of the agreement would be in the best interests of the child in light of
20 the factors specified in sub. (4) (g), or that there has been a substantial change in
21 circumstances since the entry of the last order affecting the agreement, and that the
22 petitioner, before filing the petition, participated, or attempted to participate, in good
23 faith in formal or informal mediation or other appropriate dispute resolution
24 proceedings to resolve the issue giving rise to the filing of the petition.

1 2. The court shall set a date and time for a hearing on a petition under subd.
2 1. and shall provide notice of the hearing to the petitioner and to all other parties to
3 the approved posttermination contact agreement, the agency that had guardianship,
4 legal custody, or supervision of the child before the termination of parental rights,
5 and, in the case of an Indian child, the Indian child's tribe. The hearing shall take
6 place on a date that allows the persons notified of the hearing a reasonable time to
7 prepare, but is no more than 30 days after the filing of the petition.

8 3. Notwithstanding s. 48.01 (1) (intro.) and (2), the court may terminate or
9 modify the approved posttermination contact agreement if the court finds by clear
10 and convincing evidence that termination or modification of the agreement would be
11 in the best interests of the child in light of the factors specified in sub. (4) (g), or that
12 there has been a substantial change in circumstances since the entry of the last order
13 affecting the agreement, and that the petitioner, before filing the petition,
14 participated, or attempted to participate, in good faith in formal or informal
15 mediation or other appropriate dispute resolution proceedings to resolve the issue
16 giving rise to the filing of the petition. An order to modify an approved
17 posttermination contact agreement may limit, restrict, condition, or decrease
18 visitation, contact, communication, or sharing of information between the child and
19 a birth relative of the child, but may not expand, enlarge, or increase that visitation,
20 contact, communication, or sharing of information or place any new obligation on the
21 adoptive parent or agency having guardianship, legal custody, or supervision of the
22 child.

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

24 48.43 **(2)** (d) A court may approve a posttermination contact agreement under
25 s. 48.429.

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

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

14 **SECTION 8.** 48.93 (1d) of the statutes, as affected by 2009 Wisconsin Act 94, is
15 amended to read:

16 48.93 **(1d)** All records and papers pertaining to an adoption proceeding shall
17 be kept in a separate locked file and may not be disclosed except under sub. (1g), (1r),
18 or (1v), or (2) (b), s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9., or 48.57 (1) (j), or by order
19 of the court for good cause shown.

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

22 48.93 **(2) (b)** All correspondence and papers, relating to the investigation,
23 ~~which~~ that are not a part of the court record, except those in the custody of agencies
24 authorized to place children for adoption, shall be transferred to the department and
25 placed in its closed files.

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

2 48.93 **(2)** (a) 1. A proposed adoptive parent whose home is the subject of an
3 investigation under s. 48.837 (1r) (c) or (4) (c) or 48.88 (2) (a) may request the agency
4 conducting the investigation to disclose its report of the investigation to any other
5 agency authorized to place children for adoption, to the state adoption information
6 exchange under s. 48.55, or to the state adoption center under s. 48.55. Within 10
7 days after receipt of the request, the agency shall disclose the report to the person
8 named in the request, unless within those 10 days the agency petitions the court for
9 an order permitting the agency not to disclose the report, to restrict the information
10 to be disclosed, or to defer disclosure of the report to a later date or for such other
11 appropriate relief as the agency may request.

12 2. The petition shall allege facts showing good cause for granting the relief
13 requested. Upon receipt of the petition, the court shall provide notice of the petition
14 to the proposed adoptive parents and the person to whom disclosure of the report was
15 requested. If any party receiving notice objects to the petition, the court shall hold
16 a hearing to take evidence relating to the relief requested in the petition. If the court
17 determines that there is good cause to grant the relief requested, the court shall
18 grant such relief as the court may consider appropriate. If the court determines that
19 there is not good cause to grant the relief requested, the court shall order the
20 petitioner to disclose the report within 10 days after the date of the hearing.

21 **SECTION 11. Initial applicability.**

22 (1) POSTTERMINATION CONTACT AGREEMENTS. The treatment of sections 48.425 (1)
23 (h), 48.426 (3) (c), 48.428 (6) (a) and (b), 48.429, 48.43 (2) (d), and 48.92 (2) of the

1 statutes first applies to a termination of parental rights petition filed on the effective
2 date of this subsection.

3 (END)