

**2009 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-AB214)**

Received: 03/25/2010

Received By: gmalaise

Wanted: As time permits

Companion to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Connie Schulze

May Contact:

Drafter: gmalaise

Subject: Children - TPR and adoption

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.wisconsin.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Posttermination contact agreements; compliance with Indian child Welfare Act

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/25/2010	nmatzke 03/26/2010		_____			
/1			jfrantze 03/26/2010	_____	sbasford 03/26/2010	sbasford 03/26/2010	

FE Sent For:

<END>

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/?	gmalaise	1, nwn 3/26	3/26	3/26	3/26		

FE Sent For:

<END>

**Malaise, Gordon**

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**From:** Malaise, Gordon  
**Sent:** Wednesday, March 24, 2010 3:58 PM  
**To:** Schulze, Connie; Sappenfield, Anne  
**Cc:** Pyritz, Michael; 'Colleen Ellingson'; 'Sowinski, Mary'  
**Subject:** RE: MITW position

Connie:

I will draft another sub that consists of Senate Sub 1, plus a1832/1 folded in and the changes in red. The change in red to item 1, i.e., that ch. 48 courts would have jurisdiction over the contracts, however, does not need to be drafted. Section 48.429 is in ch. 48 and "court" is defined in s. 48.02 (2m) for purposes of the entire chapter as the juvenile court.

When the sub is finished I will also draft as an amendment to the sub the provision exempting Indian children and parents from s. 48.429 (2) (b) on page 6.

Gordon

---

**From:** Schulze, Connie  
**Sent:** Wednesday, March 24, 2010 3:06 PM  
**To:** Sappenfield, Anne  
**Cc:** Pyritz, Michael; 'Colleen Ellingson'; 'Sowinski, Mary'; Malaise, Gordon  
**Subject:** FW: MITW position

Anne,

Gordon did a really nice job with the analysis below. We went through it point by point with the bill's architects and came up with a compromise.

I put the points that were made during our call with Mary and Colleen in red below. Please work with Gordon to draft a sub that incorporates them for items 1, 2 and 4. Also, please draft that simple amendment that Michael mentioned exempting Indian parents and children from that page 6 section. (This was your suggested compromise but we don't want to lead with it.)

Thanks!

Connie

P.S. #3 was addressed in LRB 1832/1 so no change needed.  
#5 was a misunderstanding for the tribes so no change needed.  
#6 was addressed in subsections of the senate sub so no change needed.

---

**From:** Malaise, Gordon  
**Sent:** Tuesday, March 23, 2010 4:59 PM  
**To:** Schulze, Connie  
**Subject:** FW: MITW position

Connie:

03/24/2010

All references to LRBa1826/1 should actually refer to LRB 1832/1.

Gordon

---

**From:** Malaise, Gordon  
**Sent:** Tuesday, March 23, 2010 4:58 PM  
**To:** Schulze, Connie  
**Subject:** RE: MITW position

Connie:

I'll first address the Menominee tribe's three objections and then address the tribe's six recommendations.

1. **It requires a court to ignore much of Wis. Stat. 48.01.** Section 48.01 (1) provides that the best interests of the child shall be paramount and s. 48.01 (2) addresses the best interests of an Indian child specifically. I'm not sure why the tribe is making this assertion because under the bill one of the elements that the court must find in order to approve a posttermination contact agreement is that granting posttermination contact would be in the best interests of the child. See s. 48.429 (4) (g), as created by the bill. Moreover, LRBa1826/1, item 1, clarifies that "best interests" means best interests under s. 48.01 (1) (intro.) for children generally and best interests under s. 48.01 (2) for Indian children.

2. **It makes consent to a TPR irrevocable.** LRBa1826/1, item 1, addresses this concern by saying "that, subject to ss. 48.028 (5) (c) and (6) and 48.46 (1m) and (2)," i.e., the exceptions to irrevocability in WICWA and the Children's Code, the TPR and adoption are irrevocable.

3. **It coerces a biological parent to give consent to adoption in order for biological relatives to propose posttermination contact.** DCF also raised this point in recommending that s. 48.429 (2) (b) be removed from the bill, but you chose not to do that in a1826/1.

As for the tribe's recommendations:

1. The time requirement for the agreement should be removed. Currently, the bill requires the agreement to be entered into before the granting of the TPR order. By removing the time requirement, the posttermination contact agreement could be entered into any time, even after the TPR is granted and the adoption is finalized. One factor to consider is that under s. 48.43 (2) a TPR severs all rights and duties between the biological parent and child, so after the TPR the biological parent wouldn't have much leverage to propose a posttermination agreement. Fine but it should be made clear that Chapt. 48 courts would have jurisdiction over new contracts.

~~2.~~ Subsection (b) on page 6 should be removed. This is the alleged "coercion" provision. If this provision is removed, any birth relative could propose a posttermination contact agreement even if the TPR is contested. See Department language adding the child's tribe; if the child is an Indian child, the Indian child's Indian custodian at the end of the paragraph.

3. Subsection (3) (a) on page 7 should be removed in its entirety. This provision does not need to be removed in its entirety. LRBa1826/1, item 1, addresses the tribe's objection to this provision.

~~4.~~ DCF should be directed to promulgate rules regarding the enforcement and mediation provisions. You can do this if you want, but the enforcement and mediation procedures in the bill are *court* procedures, not administrative agency procedures, so the courts should be consulted as well. Change mediation to "informal and formal mediation" in the paragraph.

5. It should be clarified whether the birth parent is a party and whether posttermination contact (other than under an agreement) can be allowed. These might be good changes. Under the bill, any birth relative could propose a posttermination contact agreement, so a birth parent might not even be a party to the agreement even though the birth relative's rights are derived through the birth parent. Maybe the bill should say that if the agreement grants contact to a birth relative other than a birth parent, the birth parent must consent to the agreement.

Also, the bill could clarify that the absence of a posttermination contact agreement does not preclude an adoptive parent, *in his or her sole discretion*, from permitting contact. The sole discretion language is necessary because under s. 48.92 (1), after an adoption all parental rights, duties, and other legal consequences thereafter exist between the adoptive parent and child, so whether to permit contact would be entirely the adoptive parent's call.

6. Other subsections that need to clarify the tribe's involvement should be amended accordingly. This is already covered in the senate sub. See, e.g., s. 48.429 (4) (f), which requires an Indian child's tribe to submit recommendations concerning the posttermination contact to the court.

I hope this analysis is helpful to you. If you want LRBa1826/1 redrafted to incorporate any of the tribe's recommendations, please advise.

Gordon

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**From:** Schulze, Connie  
**Sent:** Tuesday, March 23, 2010 11:39 AM  
**To:** Malaise, Gordon  
**Cc:** Pyritz, Michael; 'Colleen Ellingson'  
**Subject:** FW: MITW position

Dear Gordon,

We received this from the lobbyist for the tribes. They have other issues with AB 214 that are included in the memo attached to this email. Would you please take a look at this and let me know if the substitute amendment and additional amendment you have already drafted need to be changed?

Sincerely,  
Connie Schulze  
Office of Sen. Darling  
PHONE: 608/266-5830

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**From:** Pyritz, Michael  
**Sent:** Tuesday, March 23, 2010 11:25 AM  
**To:** Schulze, Connie  
**Subject:** FW: MITW position

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**From:** jstrohl@pffw.org [mailto:jstrohl@pffw.org]  
**Sent:** Monday, March 22, 2010 6:16 PM  
**To:** Pyritz, Michael  
**Subject:** Fw: MITW position

Sorry about that.

Joseph A. Strohl  
Government Relations  
7 N. Pinckney Suite 200  
Madison, WI. 53703  
Phone: (608) 251-0900

03/24/2010

Fax: (608) 251-8707  
Cell: (414) 429-2589  
Email: [jstrohl@pffw.org](mailto:jstrohl@pffw.org)  
----- Original Message -----



State of Wisconsin  
2009 – 2010 LEGISLATURE

LRBa1832/1  
GMM:bjk:rs

SENATE AMENDMENT ,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO 2009 ASSEMBLY BILL 214

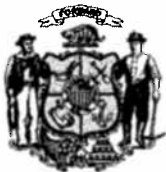
1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 7, line 6: delete “that” and substitute “that, subject to ss. 48.028 (5) (c)  
3 and (6) and 48.46 (1m) and (2),”.

4 **2.** Page 9, line 15: delete “child” and substitute “child under s. 48.01 (1) (intro.)  
5 or, in the case of an Indian child, the best interests of the Indian child under s. 48.01  
6 (2)”.

7 **3.** Page 12, line 3: delete “(intro.)” and substitute “(intro.) and (2)”.

8 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

50364/1  
LRB027471

GMM:jld/bjk/nwn:ph

In 3125  
Tomorrow 3126

SENATE SUBSTITUTE AMENDMENT 1,  
TO 2009 ASSEMBLY BILL 214

SAV

February 11, 2010 - Offered by Senator DARLING.

birth parent or other

Regen.

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.



As per the case of an Indian child, the Indian child's tribe

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, (or) the juvenile court 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 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. formal or informal

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

formal or informal

(use 2x)

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 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 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.

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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 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

( ) or in the case of an Indian child the Indian child's tribe or Indian custodian

↑ subject to ss. 48.028 (5) (c) and (6) and 48.46 (1m) and (2)

1 appropriate official designated under s. 48.09 who filed the petition; ~~or~~ the court, on  
2 its own motion, may propose a posttermination contact agreement.

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

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

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

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

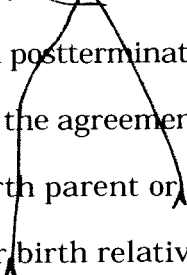
19 (4) APPROVAL OF GRANTING POSTTERMINATION CONTACT AGREEMENT. At the time a  
20 termination of parental rights order is granted, a court may approve a  
21 posttermination contact agreement if all of the following conditions are met:

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

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

24 (c) The agreement is signed by all parties to the agreement including the birth  
25 parent and child, if 12 years of age or over. If a birth parent who is under 12 years

(use 2x) other



1 of age or other birth relative who is a child is to be granted posttermination visitation,  
2 contact, communication, or sharing of information under the agreement, the parent,  
3 guardian, legal custodian, or Indian custodian of the birth parent or birth relative  
4 shall sign the agreement on behalf of the birth parent or birth relative.

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

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

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

22 (g) The court determines by clear and convincing evidence that granting  
23 posttermination visitation, contact, communication, or sharing of information as  
24 provided for in the agreement would be in the best interests of the child. In  
25 determining whether granting posttermination visitation, contact, communication,

1 or sharing of information as provided for in the agreement would be in the best  
2 interests of the child, the court shall consider all of the following factors:

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

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

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

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

*Under s. 48.01 (1) (intro.) or, in the case of an Indian child, the best interests of the Indian child under s. 48.01 (2) ✓*

15 (5) 5. Any other factors that are relevant to the best interests of the child  
16 (5) LATER-IDENTIFIED PROPOSED ADOPTIVE PARENTS. If the child who is the subject  
17 of a posttermination contact agreement is placed for adoption in the home of a  
18 proposed adoptive parent who was not identified at the time the agreement was  
19 entered into, that posttermination contact agreement shall be binding on the  
20 proposed adoptive parent unless terminated or modified under sub. (7).

21 (6) ENFORCEMENT OF POSTTERMINATION CONTACT AGREEMENT. (a) A  
22 posttermination contact agreement is enforceable only if the agreement is approved  
23 by the court under sub. (4). Any party to an approved posttermination contact  
24 agreement may petition the court that approved the agreement for specific  
25 performance of the agreement. The petition shall allege facts sufficient to show that



(use 2x) ✓

formal or informal

1 a person who is bound by the agreement is not in compliance with the agreement,  
 2 that enforcement of the agreement is in the best interests of the child in light of the  
 3 factors specified in sub. (4) (g), and that the petitioner, before filing the petition,  
 4 participated, or attempted to participate, in good faith in mediation or other  
 5 appropriate dispute resolution proceedings to resolve the dispute giving rise to the  
 6 filing of the petition.

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

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

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

1 (7) TERMINATION OR MODIFICATION OF POSTTERMINATION CONTACT AGREEMENT. (a)

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

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

20 2. The court shall set a date and time for a hearing on a petition under subd.  
21 1. and shall provide notice of the hearing to the petitioner and to all other parties to  
22 the approved posttermination contact agreement, the agency that had guardianship,  
23 legal custody, or supervision of the child before the termination of parental rights,  
24 and, in the case of an Indian child, the Indian child's tribe. The hearing shall take

and (2) ✓

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

3 3. Notwithstanding s. 48.01 (1) (intro.) the court may terminate or modify the  
4 approved posttermination contact agreement if the court finds by clear and  
5 convincing evidence that termination or modification of the agreement would be in  
6 the best interests of the child in light of the factors specified in sub. (4) (g), or that  
7 there has been a substantial change in circumstances since the entry of the last order  
8 affecting the agreement, and that the petitioner, before filing the petition ✓

9 participated, or attempted to participate, in good faith in formal or informal ✓  
10 appropriate dispute resolution proceedings to resolve the issue giving rise to the  
11 filing of the petition. An order to modify an approved posttermination contact  
12 agreement may limit, restrict, condition, or decrease visitation, contact,  
13 communication, or sharing of information between the child and a birth relative of  
14 the child, but may not expand, enlarge, or increase that visitation, contact,  
15 communication, or sharing of information or place any new obligation on the  
16 adoptive parent or agency having guardianship, legal custody, or supervision of the  
17 child.

18 SECTION 6. 48.43 (2) (d) of the statutes is created to read:  
19 48.43 (2) (d) A court may approve a posttermination contact agreement under  
20 s. 48.429.

21 SECTION 7. 48.92 (2) of the statutes is amended to read:  
22 48.92 (2) After the order of adoption is entered the relationship of parent and  
23 child between the adopted person and the adopted person's birth parents and the  
24 relationship between the adopted person and all persons whose relationship to the  
25 adopted person is derived through those birth parents shall be completely altered

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

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

11 48.93 (1d) All records and papers pertaining to an adoption proceeding shall  
12 be kept in a separate locked file and may not be disclosed except under sub. (1g), (1r),  
13 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  
14 of the court for good cause shown.

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

17 48.93 (2) (b) All correspondence and papers, relating to the investigation,  
18 ~~which~~ that are not a part of the court record, except those in the custody of agencies  
19 authorized to place children for adoption, shall be transferred to the department and  
20 placed in its closed files.

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

22 48.93 (2) (a) 1. A proposed adoptive parent whose home is the subject of an  
23 investigation under s. 48.837 (1r) (c) or (4) (c) or 48.88 (2) (a) may request the agency  
24 conducting the investigation to disclose its report of the investigation to any other  
25 agency authorized to place children for adoption, to the state adoption information

1 exchange under s. 48.55, or to the state adoption center under s. 48.55. Within 10  
2 days after receipt of the request, the agency shall disclose the report to the person  
3 named in the request, unless within those 10 days the agency petitions the court for  
4 an order permitting the agency not to disclose the report, to restrict the information  
5 to be disclosed, or to defer disclosure of the report to a later date or for such other  
6 appropriate relief as the agency may request.

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

16 **SECTION 11. Initial applicability.**

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

21 (END)