

1981 Assembly Bill 369

Date published: November 27, 1981

CHAPTER 81 , Laws of 1981

AN ACT to repeal 48.63 (2), 48.84, 48.86, 48.87, 48.88 (1) (b) and 48.89 (1) (c) and (d); to renumber 48.63 (3); to renumber and amend 48.427 (intro.) (exc. 48.427 (title)), (1), (2) (a) and (b) and (3) and 48.88 (1) (a); to amend 46.03 (18) (b), 46.10 (2), 48.01 (2), 48.14 (3), 48.36 (1), 48.83, 48.88 (2) (a), 48.89 (1) (intro.), (a) and (b) and (2), 48.90 (title) and (1) (intro.), (a) and (b), 48.91 (2), 48.95, 48.97 and 49.51 (2) (a) 8; to repeal and recreate 48.90 (2) and 48.98; and to create 46.03 (18) (am), 48.02 (5m), 48.028, 48.427 (3) (a) 5 and 6, 48.63 (3), 48.833, 48.835, 48.837, 48.839, 48.88 (2) (c), 48.90 (1) (d) and (3), 822.015 and 946.716 of the statutes; and to repeal laws of 1977, chapter 233, section 2, relating to placement for adoption, miscellaneous adoption law changes and changing penalties.

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

SECTION 1. 46.03 (18) (am) of the statutes is created to read:

46.03 (18) (am) Paragraph (a) does not prevent the department from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7).

SECTION 1g. 46.03 (18) (b) of the statutes is amended to read:

46.03 (18) (b) Any person receiving services provided or purchased under par. (a) or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds

for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, shall be liable for the services in the amount of the fee established under par. (a). If a minor receives services without consent of a parent or guardian under s. 51.47, the department shall base the fee solely on the minor's ability to pay.

SECTION 1r. 46.10 (2) of the statutes is amended to read:

46.10 (2) Except as provided in sub. (2m), any person, including but not limited to a person admitted or committed under ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.01, 1977 stats., 975.02, 1977 stats., 975.06 and 975.17, 1977 stats., receiving care, maintenance, services and supplies provided by any institution in this state including university of Wisconsin hospital and clinics, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies, and any person receiving care and services under boards or facilities established under ss. 49.175, 51.42 and 51.437, and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). The department may bring action for the enforcement of the liability. If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon the property for their support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for those persons. The department shall make every reasonable effort to notify the relatives liable as soon as possible after the beginning of the maintenance, but the notice or the receipt thereof is not a condition of liability of the relative.

SECTION 2. 48.01 (2) of the statutes is amended to read:

48.01 (2) This chapter shall be liberally construed to effect the objectives contained in this section. The best interests of the child shall always be of paramount consideration, but the court shall also consider the interest of the parents or guardian of the child, the interest of the person or persons with whom the child has been placed for adoption and the interests of the public.

SECTION 3. 48.02 (5m) of the statutes is created to read:

48.02 (5m) "Foreign jurisdiction" means a jurisdiction outside of the United States.

SECTION 4. 48.028 of the statutes is created to read:

48.028 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

SECTION 5. 48.14 (3) of the statutes is amended to read:

48.14 (3) The adoption of children, ~~except in counties having a population of 500,000 or more.~~

SECTION 5m. 48.36 (1) of the statutes is amended to read:

48.36 (1) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.34 or 48.345, the duty of the parent or guardian or, in the case of a transfer of guardianship and custody under s. 48.839 (4), the duty of the former guardian to provide support shall continue even though the legal custodian or the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the child shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department, a county department of public welfare or a board under s. 46.23, 51.42 or 51.437, shall be subject to the payment provisions under ss. 46.03 (18) and 46.10 (14). However, if at the time the child is placed into such residential services a court order for support already exists under ch. 52 or 767 the amount of parental payment to be applied to residential services shall not be less than the amount specified in that court order.

SECTION 6. 48.427 (intro.) (exc. 48.427 (title)), (1), (2) (a) and (b) and (3) of the statutes are renumbered 48.427 (1), (2), (3), (5) and (4), respectively, and amended to read:

48.427 (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the following dispositions specified under subs. (2) to (4) within 10 days:

(2) ~~Dismiss~~ The court may dismiss the petition if the court it finds that the evidence does not warrant the termination of parental rights.

(3) ~~Enter~~ The court may enter an order permanently terminating the parental rights of one or both parents. If the rights of both parents or of the only living parent are terminated, the court shall either:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department of social services in counties having a population of 500,000 or more;

2. A county department of social services licensed to accept guardianship under s. 48.57 (1) (hm);

3. A child welfare agency licensed under s. ~~48.60; or~~ 48.61 (5) to accept guardianship.

4. The department; ~~or.~~

(b) Transfer guardianship of the child to one of the agencies ~~listed in subd. 1~~ specified under par. (a) 1 to 4 and physical custody of the child to ~~a suitable~~ an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(4) ~~Enter~~ The court may enter an order terminating the parental rights of one or both parents and placing the child in sustaining care under s. 48.428.

(5) The guardian appointed under ~~par. (a)~~ sub. (3) shall report to the court on the status of the child 6 months after the date the order was made and thereafter every year on the anniversary of the date that the first report was made until the child is adopted.

SECTION 7. 48.427 (3) (a) 5 and 6 of the statutes are created to read:

48.427 (3) (a) 5. A relative with whom the child resides, if the relative has filed a petition to adopt the child.

6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

SECTION 8. 48.63 (2) of the statutes is repealed.

SECTION 9. 48.63 (3) of the statutes is renumbered 48.63 (2).

SECTION 10. 48.63 (3) of the statutes is created to read:

48.63 (3) Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under ss. 48.833, 48.835, 48.837 and 48.839.

SECTION 11. 48.83 of the statutes is amended to read:

48.83 (1) ~~The circuit court of the county where the child is shall, upon the filing of a petition for adoption of such or for the adoptive placement of a child, have exclusive has jurisdiction over such the child which jurisdiction shall continue until such the petition is withdrawn, denied or granted. Venue shall be in the county where the child is at the time of the filing of the petition is filed. The court may transfer the case to a court in the county in which the proposed adoptive parents reside.~~

(2) If the adoption is denied, ~~the jurisdiction over the child shall immediately revert to the court which appointed the guardian, unless the appointing court is a court of another state or foreign jurisdiction, in which case the court of the county where the child is shall have jurisdiction.~~

SECTION 12. 48.833, 48.835, 48.837 and 48.839 of the statutes are created to read:

48.833 Placement of children for adoption by agencies. The department, a county agency under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed to accept guardianship under s. 48.61 (5) may place a child for adoption in a licensed foster home without a court order if the department or agency is the guardian of the child or makes the placement at the request of another agency which is the guardian of the child.

48.835 Placement of children with relatives for adoption. (1) DEFINITION. In this section and s. 48.837, "custody" means physical custody of a child by the child's parent not in violation of a custody order issued by a court. "Custody" does not include physical custody during visitation periods subject to a court order.

(2) ADOPTIVE PLACEMENT. A parent having custody of a child may place the child for adoption in the home of a relative without a court order.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED; EXCEPTION. (a) If the child's parent has not filed a petition for the termination of parental rights under s. 48.42, the relative with whom the child is placed shall file a petition for the termination of the parents' rights at the same time the petition for adoption is filed, except as provided under par. (b).

(b) If the person filing the adoption petition is a stepparent with whom the child and the child's parent reside, the stepparent shall file only a petition to terminate the parental rights of the parent who does not have custody of the child.

(4) HEARINGS. Notwithstanding s. 48.90 (1) (a), the court may hold the hearing on the adoption petition immediately after entering the order to terminate parental rights under s. 48.427 (3).

48.837 Placement of children with nonrelatives for adoption. (1) ADOPTIVE PLACEMENT. 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 under s. 48.62.

(2) PETITION FOR PLACEMENT. The petition for adoptive placement shall be verified and shall allege all of the following:

(a) The name, address and age of the child or the expected birth date of the child.

(b) The name, address and age of the birth parents and the proposed adoptive parents.

(c) The identity of any person or agency which solicited, negotiated or arranged the placement of the child with the proposed adoptive parents.

(d) A report of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or on their behalf in connection with the birth of the child, the placement of the child with the proposed adoptive parents, the medical or hospital care received by the child or by the child's mother in connection with the birth of the child and any other expenses, including the estimated legal expenses, of either the child's parent or the proposed adoptive parents. The report shall be itemized and shall show the services relating to the adoption or to the placement of the child for adoption which were received by the proposed adoptive parents, by either parent, by the child or by any other person to whom payment was made by or on behalf of the proposed adoptive parents. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any funds from the proposed adoptive parents in connection with the adoption or the placement of the child with them.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED. The petition under sub. (2) shall be filed with a petition under s. 48.42 for the voluntary consent to the termination of any existing rights of the petitioning parent or parents.

(4) RESPONSIBILITIES OF COURT. On the filing of the petitions under this section the court:

(a) Notwithstanding s. 48.422 (1), shall schedule a hearing within 60 days of the date of filing, except that the hearing may not be held before the birth of the child.

(b) Shall appoint counsel or guardians ad litem when required under s. 48.23.

(c) Shall order the department or a county agency 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 hearing 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 agency in place of the court-ordered report required under this paragraph.

(d) May, at the request of a petitioning parent, or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), order the department or a county agency under s. 48.56 to place the child, pending the hearing on the petition, in any home licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents.

(e) Shall, before hearing the petitions under subs. (2) and (3), ascertain whether the child's paternity has been 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 adjudicated and if no person has filed a declaration under s. 48.025, the court shall attempt to ascertain the paternity of the child. 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.

(5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or over, and each petitioner shall attend the hearings on the petitions under this section. The court may, for good cause, waive the requirement that the child attend the hearing.

(6) ORDER OF HEARINGS. (a) The court shall hold the hearing on the petition under sub. (2) before the hearing on the petition required under sub. (3). After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4) (c) and make a conclusion as to whether placement in the home is in the best interest of the child.

(b) If the proposed placement is approved, the court shall proceed immediately to a hearing on the petition required under sub. (3). If the parental rights of the parent are terminated, the court shall order the child placed with the proposed adoptive parent or parents and appoint as guardian of the child the department, a county agency under s. 48.57 (1) (e) or (hm) or an agency licensed to accept guardianship under s. 48.61 (5).

(7) INVESTIGATION AND CARE COSTS. The proposed adoptive parents shall pay the cost of any investigation ordered under sub. (4) (c), according to a fee schedule established by the department based on ability to pay, and shall also, if the adoption is completed, pay the cost of any care provided for the child under sub. (4) (d).

48.839 Adoption of foreign children. (1) BOND REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction, before bringing the child into this state for the purpose of adopting the child, shall file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before he or she is adopted.

(b) By filing the bond required under par. (a), the child's guardian and the surety submit to the jurisdiction of the court in the county in which the guardian resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served. Their liability on the bond may be enforced without the commencement of an independent action.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the guardian and the surety to show cause why judgment on the bond should not be entered for the department. If neither the guardian nor the surety appear for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the guardian and the surety.

(d) If custody of the child is transferred under sub. (4) (b) to a county department or child welfare agency before the child is adopted, the department shall periodically bill the guardian and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond against the guardian and surety.

(e) This section does not preclude the department or any other agency given custody of a child under sub. (4) (b) from collecting under s. 46.03 (18) (b) or 46.10 from the former guardian for costs in excess of the amount recovered under the bond incurred in enforcing the bond and providing care and maintenance for the child until he or she reaches age 18 or is adopted.

(f) The department may waive the bond requirement under this subsection.

(2) EVIDENCE OF AVAILABILITY FOR ADOPTION REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction and who intends to bring the child into this state for the purpose of adopting the child shall file with the department a certified copy of the judgment or order of a court of the foreign jurisdiction or other instrument having the effect under the laws of the foreign jurisdiction of freeing the child for adoption. If the instrument is not a judgment or order of a court, the guardian shall also file with the department a copy of the law under which the instrument was issued, unless the department waives this requirement. The guardian shall also file English translations of the court judgment or order or other instrument and of the law. The department shall return the originals to the guardian and keep on file a copy of each document.

(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), 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.

(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), the department shall certify to the U.S. immigration and naturalization service that all preadoptive requirements of this state that can be met prior to the child's arrival in the United States have been met.

(3) PETITION FOR ADOPTION OR TERMINATION OF PARENTAL RIGHTS REQUIRED. (a) Within 60 days after the arrival of a child brought into this state from a foreign jurisdiction for the purpose of adoption, the individual who is the child's guardian shall file a petition to adopt the child, a petition to terminate parental rights to the child, or both. If only a petition to terminate parental rights to the child is filed under this paragraph, the individual guardian shall file a petition for adoption within 60 days of the order terminating parental rights. The individual guardian shall file with the court the documents filed with the department under sub. (2) (a).

(b) Except as provided in par. (a) and sub. (4) (a), the termination of a parent's parental rights to a child who is a citizen of a foreign jurisdiction is not required prior to the child's adoption by his or her guardian.

(c) If a petition for adoption is filed under par. (a), the individual guardian filing the petition shall file a copy of the petition with the department at the time the petition is filed with the court. If the individual guardian filed an instrument other than a court order or judgment under sub. (2) (a), the department may make a recommendation to the court as to whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption.

(d) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed an instrument other than a court order or judgment under sub. (2) (a), the court shall determine whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption. The court shall presume that the instrument has that effect unless there are substantial irregularities on the face of the document or unless the department shows good cause for believing that the instrument does not have that effect. If the court determines that the instrument does not have the effect of freeing the child for adoption, the court shall order the petitioner to file a petition to terminate parental rights under s. 48.42 within 10 days.

(e) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed a court order or judgment under sub. (2) (a), the court order or judgment shall be legally sufficient evidence that the child is free for adoption.

(4) TRANSFER OF GUARDIANSHIP; FORFEITURE OF BOND. If a guardian does not file a petition as required under sub. (3) (a) or (d), or if the petition for adoption under sub. (3) is withdrawn or denied, the court:

(a) Shall transfer guardianship of the child to the department or to an agency under s. 48.57 (1) (e) or (hm) or 48.61 (5) and order the guardian to file a petition for termination of parental rights under s. 48.42 within 10 days.

(b) Shall transfer legal custody of the child to a county department under s. 48.56 (1) or child welfare agency licensed under s. 48.60.

(c) Shall order the guardian who filed the bond under sub. (1) (a) to show cause why the bond should not be forfeited.

(d) May order that physical custody of the child remain with a suitable individual with whom the child has been living.

(5) CHILD WELFARE SERVICES REQUIRED. Any child welfare agency licensed under s. 48.60 that negotiates or arranges the placement of a child for adoption under this section shall provide services to the child and to the proposed adoptive parents until the child's adoption is final.

SECTION 13. 48.84 of the statutes is repealed.

SECTION 14. 48.86 and 48.87 of the statutes are repealed.

SECTION 15. 48.88 (1) (a) of the statutes is renumbered 48.88 (1) and amended to read:

48.88 (1) Upon the filing of a petition for adoption, the court shall ~~set a time and place for hearing the petition, allowing time for the investigation and report required by sub. (2), which must be received prior to the hearing~~ schedule a hearing within 90 days of the filing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any, to the agency making the investigation under sub. (2), and to the department when its recommendation is required by s. 48.89 and to the child if the child is 12 years of age or over.

SECTION 16. 48.88 (1) (b) of the statutes is repealed.

SECTION 17. 48.88 (2) (a) of the statutes is amended to read:

48.88 (2) (a) Upon the filing of a petition for adoption, the court shall order a ~~licensed child welfare agency or a county agency specified in s. 48.56~~ having guardianship of the child to make an investigation of the environment and antecedents of the ~~person~~ child to be adopted to ascertain whether the ~~person~~ child is a proper subject for adoption and of the home of the petitioner to determine whether it is a suitable home. ~~The court may request the department to perform such a study and the department may furnish such requested service.~~ If the child is a citizen of a foreign jurisdiction and is under the guardianship of an individual, the court shall order the agency which conducted the home study required under federal law prior to the child's entry into the United States to conduct the study. The agency making the investigation shall make a report to the court ~~within 90 days of the entry of the order for~~ at least 10 days before the hearing unless the time is reduced for good cause shown by the petitioner or extended by the court. The report shall be part of the record of the proceedings.

SECTION 18. 48.88 (2) (c) of the statutes is created to read:

48.88 (2) (c) The requirement for an investigation under par. (a) applies to adoptions by a relative of the child except that the court shall order the department, a county agency under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency to conduct the investigation.

SECTION 19. 48.89 (1) (intro.), (a) and (b) and (2) of the statutes are amended to read:

48.89 (1) (intro.) The recommendation of the department is required for the adoption of the following ~~minors~~ children:

(a) A ~~minor~~ child born out of wedlock and not subsequently legitimated or adopted;

(b) A ~~minor child~~ who has no living parents or whose parents have had their rights legally terminated; if the child is not under the guardianship of an agency under s. 48.57 (1) (e) or (hm) or 48.61 (5).

(2) The department shall make its recommendation to the court ~~within 90 days of the entry of the order for~~ at least 10 days before the hearing unless the time is extended by the court. The recommendation shall be part of the record of the proceedings.

SECTION 20. 48.89 (1) (c) and (d) of the statutes are repealed.

SECTION 21. 48.90 (title) and (1) (intro.), (a) and (b) of the statutes are amended to read:

48.90 (title) Filing of adoption petition; preadoption residence. (1) (intro.) ~~No A petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months, except where at any time if:~~

(a) One of the petitioners is ~~related to a relative of~~ a relative of the child by blood, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents; ~~or.~~

(b) The petitioner is ~~related to the child as a~~ the child's stepparent; ~~or.~~

SECTION 22. 48.90 (1) (d) of the statutes is created to read:

48.90 (1) (d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

SECTION 23. 48.90 (2) of the statutes is repealed and recreated to read:

48.90 (2) Except as provided under sub. (1), no petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months or more.

SECTION 24. 48.90 (3) of the statutes is created to read:

48.90 (3) No petition for adoption may be filed unless the petitioners have complied with all applicable provisions of this chapter relating to adoptive placements.

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

48.91 (2) (a) In an adoption proceeding for a child born out of wedlock and not subsequently legitimated or adopted, the court shall establish whether the rights of any persons who have filed declarations of paternal interest under s. 48.025 have been determined or whether paternity has been adjudicated in this state or in another jurisdiction. If the court finds that no such determination has been made, 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. ~~The~~

(b) Except as provided under s. 48.839 (3) (b), the termination of a parent's parental rights is required as provided in subch. VIII prior to the adoption of the child unless the parent consents to the adoption under s. 48.84.

SECTION 26. 48.95 of the statutes is amended to read:

48.95 Withdrawal or denial of petition. If Except as provided under s. 48.839 (3) (b), if the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the department, a licensed child welfare agency, a county department of social services in counties having a population of 500,000 or more, a county department of public welfare or a county children's board licensed for such purpose by the department, the minor shall remain in the legal custody of that department or agency.

SECTION 27. 48.97 of the statutes is amended to read:

48.97 (title) Adoption orders of other jurisdictions. When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the ~~state department or a county department authorized to make adoption placements~~ has approved of the ~~adoptive parents and adoptive home placement~~. A child whose adoption would otherwise be valid under this section may be ~~readopted~~ in accordance with this chapter if ~~such~~ readoption is necessary under federal law to permit the child to enter this country.

SECTION 28. 48.98 of the statutes is repealed and recreated to read:

48.98 Interstate placement of children. (1) No person may bring a child into this state or send a child out of this state for the purpose of placing the child in foster care or for the purpose of adoption without a certificate from the department that the home is suitable for the child.

(2) (a) Any person, except a county agency under s. 48.56 or an agency licensed under s. 48.60, who brings a child into this state for the purpose of placing the child in a foster home shall, before the child's arrival in this state, file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before the child reaches age 18 or is adopted.

(b) By filing the bond required under par. (a), the person filing the bond and the surety submit to the jurisdiction of the court in the county in which the person resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the person who filed the bond and the surety to show cause why judgment on the bond should not be entered for the department. If neither the person nor the surety appears for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the person who filed the bond and the surety.

(d) The department shall periodically bill the person who filed the bond and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond.

(e) The department may waive the bond requirement under par. (a).

(3) The person bringing or sending the child into or out of this state shall report to the department, at least once each year and at any other time required by the department, concerning the location and well-being of the child, until the child is 18 years of age or is adopted.

(4) (a) This section applies only to interstate placements of children which are not governed by s. 48.988.

(b) Section 48.839 governs the placement of children who are not U.S. citizens and not under agency guardianship who are brought into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may make all rules necessary for the enforcement of this section.

SECTION 29. 49.51 (2) (a) 8 of the statutes is amended to read:

49.51 (2) (a) 8. To administer child welfare ~~service~~ services under and ~~subject to~~ ss. 48.56 and 48.57, ~~thereby administering the functions otherwise administered by county children's board and licensed child welfare agencies and the authority to accept permanent care and custody and guardianship of any child children~~ upon the order of a competent court to this effect and to place children for adoption and to ~~give consent~~ make recommendations relating to the adoption of such child ~~pursuant to the statutes regulating adoption proceedings~~ children under s. 48.85.

SECTION 30. 822.015 of the statutes is created to read:

822.015 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

SECTION 31. 946.716 of the statutes is created to read:

946.716 Unauthorized placement for adoption. (1) Whoever does any of the following is guilty of a Class E felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption.

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption.

(2) This section does not apply to placements under ss. 48.839, 48.98 or 48.988.

SECTION 32. Laws of 1977, chapter 233, section 2 is repealed.

SECTION 33. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
48.14 (2)(b)	48.427, 48.43 and 48.85 and ch. 880	48.427, 48.43 and 48.839 (4)(a) and ch. 880
48.42 (1)	48.25	48.25 or 48.835
48.425 (1)(f)	48.427 (2)(a)	48.427 (3)(a) 1 to 4
48.425 (1)(g)	48.427 (2)(a)	48.427 (3)(a) 1 to 4
48.428 (2)	48.427 (2)(a)	48.427 (3)(a) 1 to 4

SECTION 34. **Initial applicability.** The treatment of sections 46.03 (18) (am), 48.01 (2), 48.14 (3), 48.427 (3) (a) 5 and 6, 48.63 (2) and (3), 48.83 (1), 48.833, 48.835, 48.837, 48.839, 48.86, 48.87, 48.88 (1) (a) and (2) (a) and (c), 48.89 (1) (b) and (2), 48.90 (1) (intro.) and (d), 48.91 (2) and (3), 48.97, 48.98 (2) and 946.716 of the statutes by this act applies only to petitions for adoption or termination of parental rights filed on or after the effective date of this act.

SECTION 35. **Effective date.** This act takes effect on the first day of the 3rd month commencing after its publication.