



State of Wisconsin
2019 - 2020 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 263**

October 28, 2019 - Offered by Representative BRANDTJEN.

1 **AN ACT** *to repeal* 48.42 (2) (b) 2., 48.42 (2) (b) 3. and 48.42 (2) (bm) 2.; *to*
2 *consolidate, renumber and amend* 48.42 (2) (b) (intro.) and 1. and 48.42 (2)
3 (bm) (intro.) and 1.; *to amend* 48.415 (intro.), 48.415 (6) (b), 48.415 (9) (a),
4 48.422 (6) (a), 48.424 (title), 48.424 (1) (intro.), 48.424 (2) (intro.), 48.424 (4)
5 (intro.), 48.424 (5), 48.427 (1m) and 48.837 (5); and *to create* 48.41 (2) (bm),
6 48.41 (2) (cm), 48.415 (1) (a) 4., 48.415 (1) (a) 5., 48.828 and 48.913 (1) (em) of
7 the statutes; **relating to:** termination of parental rights; the rights of alleged
8 fathers in certain proceedings; and payments allowed in connection with an
9 adoption.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes with respect to the termination of parental rights, adoption, and the rights of various parties in those proceedings. Specifically, the bill does all of the following:

1. Combines the fact-finding hearing and dispositional hearing in a TPR proceeding.

2. Provides a method by which a mother, father, or alleged or presumed father may disclaim his or her parental rights with respect to a child under the age of one who is not an Indian child in writing as an alternative to appearing in court to consent to the termination of his or her parental rights.

3. Makes changes to some of the grounds for involuntary TPR.

4. Provides that an alleged father of a nonmarital child whose paternity has not been established is entitled to actual notice of a TPR proceeding, and the resulting rights of standing in that proceeding, only if that person has filed a declaration of paternal interest.

5. Allows payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.

Termination of parental rights hearings

Under current law, if a petition to terminate a person's parental rights is filed, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) must hold a fact-finding hearing to determine if there are any grounds for the TPR. Under current law, if, at the fact-finding hearing, the juvenile court or jury finds grounds for TPR, the juvenile court must find the parent to be unfit. The juvenile court must then immediately hear evidence and motions on dispositions, and make a disposition based on the best interest of the child. Generally, the juvenile court is allowed to delay the dispositional hearing for up to 45 days after the fact-finding hearing if all parties agree or if the court orders an agency to submit a report on the child's history.

This bill combines the fact-finding and dispositional hearings by requiring the juvenile court or jury to hear all evidence relevant to TPR grounds and disposition before making a determination as to whether there are grounds for TPR. If grounds for TPR are found by the juvenile court or jury, the juvenile court must find the parent unfit. If the juvenile court finds the parent to be unfit, the bill requires the court to immediately make a disposition. The bill allows the court to delay making both a determination of fitness and a disposition by granting a continuance for no more than 45 days if all parties agree or if the court orders an agency to submit a report on the child's history.

Disclaimer of parental rights

Subject to certain exceptions, current law generally requires a birth parent to appear in court to consent to the termination of his or her parental rights. This bill adds an exception that allows a mother, father, or alleged or presumed father to avoid appearing in court if he or she files with the court an affidavit disclaiming his or her parental rights with respect to a child under the age of one who is not an Indian child. A minor may use such an affidavit of disclaimer only after the TPR petition has been filed and he or she has been appointed a guardian ad litem and only if the guardian ad litem approves the disclaimer. The affidavit must comply with certain requirements, including that it must be notarized and must include a statement that the parent understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims any rights that he or she may have to the child.

Under the bill, the affidavit containing a disclaimer of parental rights may be executed before the birth of the child by the father or alleged or presumed father but

not the mother, may not be executed by either parent between the birth and 72 hours after the birth or on or after the child's first birthday, and may be executed by either parent 72 hours or more after the birth. If executed 72 hours or more after the birth of the child, or if not revoked by the father or alleged or presumed father before 72 hours after the birth of the child, the disclaimer is irrevocable unless obtained by fraud or duress. Under the bill, no action to invalidate a disclaimer, including an action based on fraud or duress, may be commenced more than six months after the affidavit was executed, except that, if the petition to terminate parental rights is granted, no action to invalidate the disclaimer may be commenced later than the time limits allowed for filing a motion for relief from a judgment or order terminating parental rights.

Grounds for termination of parental rights

Under current law, in a proceeding for involuntary TPR, the juvenile court must determine whether grounds exist for TPR. One of the grounds for TPR under current law is failure to assume parental responsibility for a child, which is established by proving that the parent or the person who may be the parent of the child has not had a substantial parental relationship with the child. "Substantial parental relationship" is defined in current law as the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. In evaluating whether a person has had a substantial parental relationship with the child, current law allows the juvenile court to consider certain factors, including whether the person has expressed concern for or interest in the support, care, or well-being of the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy.

This bill changes the factor related to expressing concern for or interest in the support, care, and well-being of the child to whether the person has provided care or support for the child. The bill eliminates the factor of whether the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. The bill instead provides that proving that a person who is or may be the father of the child failed to provide care and support for the mother during her pregnancy, without reasonable cause, establishes abandonment of a child, which is a ground for TPR under current law. Also under the bill, proving that a parent has failed without reasonable cause to pay court-ordered payments of child support establishes abandonment of the child.

Rights of an alleged father

Under this bill, an alleged father of a nonmarital child whose paternity has not been established is entitled to actual notice of a TPR proceeding, and the resulting rights of standing in that proceeding, only if that person has filed a declaration of paternal interest. There are three types of alleged fathers of a nonmarital child who currently are entitled to TPR notice:

1. A person alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child.

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

3. A person who has filed a declaration of paternal interest.

The bill provides that a person who is eligible to but who fails to file a declaration of paternal interest in matters affecting a child is deemed to have irrevocably consented to the termination of any parental rights the person has to the child and to the child's adoption unless, at the time of the TPR or adoption petition, the person's paternity of the child was acknowledged or was in the process of being adjudicated. The bill makes no change to the requirements of notice or to a father's rights in a TPR or adoption proceeding with respect to an Indian child.

Under current law, any person claiming to be the father of a nonmarital child whose paternity has not been established may file with the Department of Children and Families a declaration of paternal interest in matters affecting the child. Generally, the declaration may be filed before the child's birth or within 14 days after the child's birth and may be revoked at any time. In certain cases a petitioner may file with the petition an affidavit signed by the mother that provides information identifying an alleged father, in which case the petitioner is required to send notice to the alleged father of his right to file a declaration of paternal interest. In that case, the alleged father has 21 days after receipt of such notice to file the declaration. Filing a declaration does not extend parental rights to the person filing the declaration, but it does entitle that person to notice of certain proceedings related to the child, including a TPR proceeding.

Under current law, a person who may be the father of a nonmarital child by virtue of the fact that the person had sexual intercourse with the mother of the child, whose paternity has not been established, is considered to be on notice that a pregnancy and a TPR proceeding might result and has the duty to protect his own rights and interests. Under current law, certain putative fathers are entitled to actual notice of a TPR proceeding involving the child. Under current law, a person who is not entitled to actual notice of a TPR proceeding does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations unless the person appears at the hearing, establishes paternity, and proves certain facts relating to residing out of state and being deprived of the opportunity to preserve his paternal interests.

Payments relating to adoption

This bill allows payments to be made to an out-of-state private child placing agency that is licensed in the state in which it operates for services provided in connection with an adoption. The bill defines a private child placing agency as a private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney, that facilitates, causes, or is involved in the placement of a child from one state to another state. Current law allows payments for such services only to a child welfare agency licensed in this state.

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

1 **SECTION 1.** 48.41 (2) (bm) of the statutes is created to read:

2 48.41 (2) (bm) 1. Subject to subd. 1m., a mother, father, or presumed or alleged
3 father may consent to the termination of any parental rights that he or she may have
4 with respect to a child who is under one year of age and who is not an Indian child
5 as provided in par. (a) or (b) or by filing with the court an affidavit of disclaimer of
6 parental rights that is notarized and that meets the requirements under subds. 2.
7 to 8.

8 1m. A minor may consent to the termination of any parental rights that he or
9 she may have with respect to a child by using an affidavit of disclaimer under subd.
10 1. only after the petition to terminate parental rights has been filed and he or she has
11 been appointed a guardian ad litem and only if the guardian ad litem approves the
12 disclaimer.

13 2. All of the following apply to the affidavit of disclaimer of parental rights
14 under subd. 1.:

15 a. The affidavit may not be executed after the birth of the child until 72 hours
16 after the birth of the child and may not be executed on or after the child's first
17 birthday. The father or presumed or alleged father may, but the mother may not,
18 execute the affidavit before the birth of the child.

19 b. The affidavit, if executed by the father or presumed or alleged father before
20 the birth of the child, is revocable until 72 hours after the birth of the child, as
21 provided under subd. 9.

22 c. The affidavit is irrevocable if executed 72 hours or more after the birth of the
23 child or if not revoked before 72 hours after the birth of the child, unless it was
24 obtained by fraud or duress.

1 d. Except as provided in subd. 2. e. and s. 48.028 (5) (b) and (c) and (6), no action
2 to invalidate the affidavit, including an action based on fraud or duress, may be
3 commenced more than 6 months after the date the affidavit was executed.

4 e. If the petition to terminate parental rights is granted, no action to invalidate
5 the affidavit may be commenced later than the time limits allowed for filing a motion
6 for relief from judgment under s. 48.46 (2).

7 3. An affidavit under subd. 1. shall contain all of the following:

8 a. The name, county of residence, and age of the parent whose parental rights
9 are being terminated.

10 b. The name, age, and birth date of the child, if born.

11 c. The names and addresses of the guardians of the person and of the estate of
12 the child, if any.

13 d. A statement of whether the person whose parental rights are being
14 terminated is or is not presently obligated by court order to make payments for the
15 support of the child.

16 e. A full description and statement of value of all property the child owns or
17 possesses.

18 f. An allegation that termination of parental rights is in the best interest of the
19 child.

20 g. The name and county of residence of any other parent or presumed or alleged
21 father, a statement that the parental rights of the other parent or presumed or
22 alleged father have been terminated by death or court order, or a statement that the
23 child has no other parent or presumed or alleged father.

24 h. A statement containing the information and understandings specified in
25 subd. 4.

1 i. A statement that the child is not an Indian child.

2 4. An affidavit under subd. 1. shall contain a statement in substantially the
3 following form:

4 “I have been informed of and understand all of the following:

5 A. That a court order terminating parental rights will permanently end all
6 legal rights and duties that exist between me and the child, such as the duty to
7 support, the right to custody and visitation, and the right to inherit.

8 B. That there are parenting-related services that would be available to me if
9 I chose not to consent to the termination of my parental rights.

10 C. That this affidavit may not be executed less than 72 hours after the birth
11 of the child, on or after the child’s first birthday, or by the child’s mother before the
12 birth of the child.

13 D. That the child’s father or presumed or alleged father has the right to revoke
14 an affidavit of disclaimer until 72 hours after the birth of the child.

15 E. That the affidavit is irrevocable if executed 72 hours or more after the birth
16 of the child or if not revoked before 72 hours after the birth of the child, unless it was
17 obtained by fraud or duress.

18 F. That no action to invalidate the affidavit, including an action based on fraud
19 or duress, may be commenced more than 6 months after the date the affidavit was
20 executed, except that, if the petition to terminate parental rights is granted, no
21 action to invalidate the affidavit may be commenced later than the time limits
22 allowed for filing a motion for relief from judgment under s. 48.46 (2).”

23 5. An affidavit under subd. 1. shall contain a statement that the person
24 voluntarily disclaims any rights that he or she may have to the child, including the
25 right to notice of proceedings under this chapter.

1 6. If a guardian has not been appointed under s. 48.977, an affidavit under
2 subd. 1. may contain the nomination of the department, a county department
3 authorized to accept guardianship under s. 48.57 (1) (e) or (hm), or a child welfare
4 agency licensed under s. 48.61 (5) to accept guardianship to serve as guardian of the
5 child and the individual's address.

6 7. A copy of the affidavit shall be provided to the person at the time he or she
7 signs the affidavit.

8 8. The affidavit may not contain terms for post-termination contact between
9 the child and the person whose parental rights are to be terminated as a condition
10 of the disclaimer of parental rights.

11 9. To revoke a disclaimer of parental rights in an affidavit under subd. 1., the
12 father or presumed or alleged father shall sign a statement revoking the disclaimer
13 of parental rights that is notarized. A copy of the revocation shall be filed with the
14 clerk of court. The revocation is not valid unless it is executed and filed before 72
15 hours after the birth of the child.

16 **SECTION 2.** 48.41 (2) (cm) of the statutes is created to read:

17 48.41 (2) (cm) 1. Except as provided in subd. 2., a person who is eligible to file
18 a declaration of paternal interest in matters affecting a child under s. 48.025 and who
19 fails to do so as provided in that section is deemed to have irrevocably consented to
20 the termination of any parental rights that he may have and is deemed to have
21 disclaimed any rights that he may have to the child, including the right to notice of
22 proceedings under this subchapter.

23 2. Subdivision 1. does not apply if, at the time a petition under s. 48.42 is filed,
24 any of the following applies:

1 a. An action or motion to determine if the person is the child's father has been
2 filed and has not been resolved.

3 b. The person has been acknowledged as the child's father under s. 767.805 or
4 a substantially similar law of another state and the acknowledgment has not been
5 rescinded.

6 c. The person meets the conditions specified in s. 48.423 (2).

7 **SECTION 3.** 48.415 (intro.) of the statutes is amended to read:

8 **48.415 Grounds for involuntary termination of parental rights.** (intro.)

9 At the fact-finding portion of the fact-finding and dispositional hearing the court or
10 jury shall determine whether grounds exist for the termination of parental rights.

11 If the child is an Indian child, the court or jury shall also determine at the
12 fact-finding portion of the fact-finding and dispositional hearing whether continued

13 custody of the Indian child by the Indian child's parent or Indian custodian is likely
14 to result in serious emotional or physical damage to the Indian child under s. 48.028

15 (4) (e) 1. and whether active efforts under s. 48.028 (4) (e) 2. have been made to
16 prevent the breakup of the Indian child's family and whether those efforts have

17 proved unsuccessful, unless partial summary judgment on the grounds for
18 termination of parental rights is granted, in which case the court shall make those

19 determinations at the dispositional portion of the fact-finding and dispositional
20 hearing. Grounds for termination of parental rights shall be one of the following:

21 **SECTION 4.** 48.415 (1) (a) 4. of the statutes is created to read:

22 48.415 (1) (a) 4. That a person who is or may be the father of the child failed
23 without reasonable cause to provide care and support for the mother during her
24 pregnancy.

25 **SECTION 5.** 48.415 (1) (a) 5. of the statutes is created to read:

1 48.415 (1) (a) 5. That the parent has failed without reasonable cause to pay
2 court-ordered payments of child support.

3 **SECTION 6.** 48.415 (6) (b) of the statutes is amended to read:

4 48.415 (6) (b) In this subsection, “substantial parental relationship” means the
5 acceptance and exercise of significant responsibility for the daily supervision,
6 education, protection, and care of the child. In evaluating whether the person has
7 had a substantial parental relationship with the child, the court may consider such
8 factors, including, ~~but not limited to,~~ whether the person has ~~expressed concern for~~
9 ~~or interest in the~~ provided care or support, care or well-being of ~~for~~ the child, ~~and~~
10 whether the person has neglected or refused to provide care or support for the child
11 ~~and whether, with respect to a person who is or may be the father of the child, the~~
12 ~~person has expressed concern for or interest in the support, care or well-being of the~~
13 ~~mother during her pregnancy.~~

14 **SECTION 7.** 48.415 (9) (a) of the statutes is amended to read:

15 48.415 (9) (a) Parenthood as a result of sexual assault, which shall be
16 established by proving that the child was conceived as a result of a sexual assault in
17 violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085. Conception
18 as a result of sexual assault as specified in this paragraph may be proved by a final
19 judgment of conviction or other evidence produced at the fact-finding portion of a
20 fact-finding and dispositional hearing under s. 48.424 indicating that the person
21 who may be the father of the child committed, during a possible time of conception,
22 a sexual assault as specified in this paragraph against the mother of the child.

23 **SECTION 8.** 48.42 (2) (b) (intro.) and 1. of the statutes are consolidated,
24 renumbered 48.42 (2) (b) and amended to read:

1 48.42 (2) (b) Except as provided in par. (bm), if the child is a nonmarital child
2 who is not adopted or whose parents do not subsequently intermarry under s.
3 767.803 and whose paternity has not been established: ~~1. A, a~~ a person who has filed
4 an unrevoked declaration of paternal interest under s. 48.025 before the birth of the
5 child or within 14 days after the birth of the child.

6 **SECTION 9.** 48.42 (2) (b) 2. of the statutes is repealed.

7 **SECTION 10.** 48.42 (2) (b) 3. of the statutes is repealed.

8 **SECTION 11.** 48.42 (2) (bm) (intro.) and 1. of the statutes are consolidated,
9 renumbered 48.42 (2) (bm) and amended to read:

10 48.42 (2) (bm) If the child is a nonmarital child who is under one year of age
11 at the time the petition is filed and who is not adopted or whose parents do not
12 subsequently intermarry under s. 767.803 and whose paternity has not been
13 established and if an affidavit under sub. (1g) (a) is filed with the petition: ~~1. A, a~~ a
14 person who has filed an unrevoked declaration of paternal interest under s. 48.025
15 before the birth of the child, within 14 days after the birth of the child, or within 21
16 days after a notice under sub. (1g) (b) is mailed, whichever is later.

17 **SECTION 12.** 48.42 (2) (bm) 2. of the statutes is repealed.

18 **SECTION 13.** 48.422 (6) (a) of the statutes is amended to read:

19 48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose
20 parents do not subsequently intermarry under s. 767.803 and for whom paternity
21 has not been established, or for whom a declaration of paternal interest has not been
22 filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42
23 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g)
24 (b) is mailed, the court shall hear testimony concerning the paternity of the child.
25 Based on the testimony, the court shall determine whether all interested parties who

1 ~~are known have been notified for whom notice is required~~ under s. 48.42 (2) and (2g)
2 (ag) have been notified. If not, the court shall adjourn the hearing and order
3 appropriate notice to be given.

4 **SECTION 14.** 48.424 (title) of the statutes is amended to read:

5 **48.424 (title) Fact-finding and dispositional hearing.**

6 **SECTION 15.** 48.424 (1) (intro.) of the statutes is amended to read:

7 48.424 (1) (intro.) The purpose of the fact-finding portion of the fact-finding
8 and dispositional hearing is to determine in cases in which the petition was contested
9 at the hearing on the petition under s. 48.422 all of the following:

10 **SECTION 16.** 48.424 (2) (intro.) of the statutes is amended to read:

11 48.424 (2) (intro.) The fact-finding and dispositional hearing shall be
12 conducted according to the procedure specified in s. 48.31 except as follows:

13 **SECTION 17.** 48.424 (4) (intro.) of the statutes is amended to read:

14 48.424 (4) (intro.) The court or jury shall hear all evidence relevant to the issues
15 under sub. (1) and to the issue of disposition under s. 48.427 before making a
16 determination of whether there are grounds for the termination of parental rights.

17 If grounds for the termination of parental rights are found by the court or jury, the
18 court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal
19 of a petition under s. 48.427 (2). ~~Except as provided in s. 48.23 (2) (b) 3., the~~ The court
20 shall then proceed immediately to hear evidence and motions related to the
21 dispositions enumerated in make a disposition under s. 48.427. Except as provided
22 in s. 48.42 (2g) (ag), the court may delay making a determination of whether the
23 parent is unfit and making the disposition and set a date for a dispositional hearing
24 by granting a continuance of no later longer than 45 days after the fact-finding
25 hearing if any of the following apply:

1 **SECTION 18.** 48.424 (5) of the statutes is amended to read:

2 48.424 (5) If the court delays making a determination of whether the parent
3 is unfit and making a permanent disposition under sub. (4), it may transfer
4 temporary custody of the child to an agency for placement of the child until the
5 fact-finding and dispositional hearing is continued. Placement of an Indian child
6 under this subsection shall comply with the order of placement preference under s.
7 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the agency finds good cause,
8 as described in s. 48.028 (7) (e), for departing from that order.

9 **SECTION 19.** 48.427 (1m) of the statutes is amended to read:

10 48.427 (1m) In addition to any evidence presented under sub. (1), the court
11 shall give the foster parent or other physical custodian described in s. 48.62 (2) of the
12 child a right to be heard at the dispositional portion of the fact-finding and
13 dispositional hearing by permitting the foster parent or other physical custodian to
14 make a written or oral statement during the dispositional portion of the fact-finding
15 and dispositional hearing, or to submit a written statement prior to disposition,
16 relevant to the issue of disposition. A foster parent or other physical custodian
17 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
18 a right to be heard under this subsection does not become a party to the proceeding
19 on which the hearing is held solely on the basis of receiving that notice and right to
20 be heard.

21 **SECTION 20.** 48.828 of the statutes is created to read:

22 **48.828 Consent to adoption. (1)** Except as provided in subs. (2) and (3), a
23 person who is eligible to file a declaration of paternal interest in matters affecting
24 a child under s. 48.025 and who fails to do so as provided in that section is deemed
25 to have irrevocably consented to the adoption of the child and to have disclaimed any

1 rights that he may have to the child, including the right to notice of proceedings
2 under this subchapter.

3 (2) Subsection (1) does not apply with respect to the adoption of an Indian child.

4 (3) Subsection (1) does not apply if, at the time a petition for adoption is filed,
5 any of the following applies:

6 (a) An action or motion to determine if the person is the child's father has been
7 filed and has not been resolved.

8 (b) The person has been acknowledged as the child's father under s. 767.805 or
9 a substantially similar law of another state and the acknowledgment has not been
10 rescinded.

11 (c) The person meets the conditions specified in s. 48.423 (2).

12 **SECTION 21.** 48.837 (5) of the statutes is amended to read:

13 48.837 (5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or
14 over, and each petitioner shall attend the hearing on the petition under sub. (2). The
15 child, if he or she is 12 years of age or over, and each parent having custody of the child
16 shall attend the hearing on the petition under sub. (3), except that a parent who has
17 consented to the termination of his or her parental rights in writing under s. 48.41
18 (2) (b), (bm), or (d) is not required to attend the hearing. If the parent who has custody
19 of the child consents and the court approves, the proposed adoptive parents may be
20 present at the hearing on the petition under sub. (3). The court may, for good cause,
21 waive the requirement that the child attend either of the hearings.

22 **SECTION 22.** 48.913 (1) (em) of the statutes is created to read:

23 48.913 (1) (em) Services provided in connection with the adoption by a private
24 child placing agency, as defined in s. 48.99 (2) (p), that is licensed under the laws of
25 the state in which it operates.

