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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2019 Assembly Bill 561**

**Assembly Amendment 1**

### 2019 ASSEMBLY BILL 561

Under current law, a termination of parental rights (TPR) order and an adoption permanently sever the child's legal relationship with the birth parent and all relatives of the birth parent, and create the legal relationship of parent and child between the adoptive parent and the adopted child. Wisconsin law does not recognize an agreement entered into between a birth parent and a proposed adoptive parent for postadoption contact, commonly referred to as an "open adoption."

2019 Assembly Bill 561 creates a statutory procedure that allows a proposed adoptive parent and former parent or other relative to voluntarily enter into an agreement for postadoption contact privileges. Under such an agreement, a proposed adoptive parent may allow postadoption contact, but the nature and frequency of such contact may vary. A court in a TPR action or an action to grant an adoption may approve a postadoption contact agreement if several conditions are met, including:

- That the court has received a favorable recommendation for approval of the agreement from the agency that is responsible for supervising the child, from the child's guardian ad litem, and, if the child is an Indian child, from the Indian child's tribe.
- That the court determines that the former parent or relative will not undermine the proposed adoptive parent's relationship with the child and will not act in a manner that is contrary to the adoptive parent's parenting decisions.

The bill allows the adoptive parent and former parent or relative to agree to modify the terms of the agreement, if the adoptive parent so chooses. Any such stipulation may be approved by the court without a hearing if the modification is in the child's best interests.

In addition, the bill allows an adoptive parent to petition the court for modification or termination of the agreement. After a hearing, the court may modify or terminate the agreement if it is in the child's best interests and there has been a substantial change in circumstances since the agreement had been approved.

Finally, the bill allows a party to petition for enforcement of the terms of the agreement if the party first attempted mediation or an alternative dispute resolution process in good faith. After a hearing, the court may order specific performance of the agreement if it finds that enforcement is in the child's best interests. In first attempting mediation or an alternative dispute resolution process, the mediator or arbitrator must be selected by the adoptive parent, with the fees to be paid equally by the adoptive parent and former parent or relative, unless agreed otherwise in the mediation or ordered otherwise by the arbitrator or court.

### ASSEMBLY AMENDMENT 1

The amendment makes three changes to the bill. First, if the parties attempt mediation or an alternative dispute resolution process, then the mediator or arbitrator must be selected by mutual agreement of the

parties. If the parties cannot agree, then the court must appoint the mediator or arbitrator within 30 days of a request of any party.

Second, the amendment provides that a postadoption contact agreement is not enforceable for any period during which the child has been placed outside the adoptive parent's home under the Children's Code or the Juvenile Justice Code, or for any period during which the parent is denied physical placement with the child in an action affecting the family.

Third, the amendment specifies that a postadoption contact agreement does not affect a tribal right under the federal Indian Child Welfare Act or the Wisconsin Indian Child Welfare Act, and may not impair a cultural contact agreement or other agreement made between the adoptive parent of a child and an Indian tribe.

## **BILL HISTORY**

Representative Dittrich introduced 2019 Assembly Bill 561 on October 23, 2019, and offered Assembly Amendment 1 on December 6, 2019. On December 17, 2019, the Assembly Committee on Family Law recommended adoption of the amendment on a vote of Ayes, 9; Noes, 0; and passage of the bill, as amended, on a vote of Ayes, 7; Noes, 2.

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