



2019 ASSEMBLY BILL 263

June 7, 2019 - Introduced by Representatives BRANDTJEN, FIELDS, KULP, MURSAU, PLUMER, QUINN, RAMTHUN, SANFELIPPO, SKOWRONSKI, THIESFELDT and WICHGERS, cosponsored by Senators JACQUE, MARKLEIN and WANGGAARD. Referred to Committee on Children and Families.

1 **AN ACT** *to repeal* 48.42 (2) (b) 2., 48.42 (2) (b) 3., 48.42 (2) (bm) 2. and 48.422 (4);
2 *to consolidate, renumber and amend* 48.42 (2) (b) (intro.) and 1. and 48.42
3 (2) (bm) (intro.) and 1.; *to amend* 48.31 (2), 48.31 (4), 48.415 (intro.), 48.415 (6)
4 (b), 48.415 (9) (a), 48.42 (2) (a), 48.422 (1), 48.422 (5), 48.422 (6) (a), 48.424
5 (title), 48.424 (1) (intro.), 48.424 (2) (intro.), 48.424 (3), 48.424 (4) (intro.),
6 48.424 (5), 48.427 (1m) and 48.837 (5); and *to create* 48.41 (2) (bm), 48.41 (2)
7 (cm), 48.415 (1) (a) 4., 48.415 (1) (a) 5., 48.828 and 48.913 (1) (em) of the statutes;
8 **relating to:** termination of parental rights; the rights of alleged fathers in
9 certain proceedings; and payments allowed in connection with an 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. Eliminates the right to a jury trial in a termination of parental rights (TPR) proceeding and combines the fact-finding hearing and dispositional hearing in a TPR proceeding.

2. Provides a method by which an adult mother or alleged or presumed father may disclaim his or her parental rights with respect to a child who is not an Indian

ASSEMBLY BILL 263

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 an 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, any party to a TPR proceeding whose rights may be affected by the TPR order may demand a jury trial for this fact-finding hearing. This bill eliminates the right to a jury trial for the fact-finding hearing.

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 to hear all evidence relevant to TPR grounds and disposition before making a determination as to whether the parent is 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 an adult mother or adult 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 who is not an Indian child. The affidavit must comply with certain requirements, including that it must be witnessed by two individuals and 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 alleged or presumed father but not the mother, may not be executed by either parent between the birth and 72 hours after the birth, 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 alleged

ASSEMBLY BILL 263

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

ASSEMBLY BILL 263

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 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.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 48.31 (2) of the statutes is amended to read:

ASSEMBLY BILL 263

1 48.31 (2) The A hearing on a termination of parental rights petition shall be
2 to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court
3 unless the child, the child's parent, guardian, or legal custodian, the unborn child's
4 guardian ad litem, or the expectant mother of the unborn child exercises the right
5 to a jury trial by demanding a jury trial at any time before or during the plea hearing.
6 If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall
7 consist of 6 persons. ~~If a jury trial is demanded in a proceeding under s. 48.42, the~~
8 ~~jury shall consist of 12 persons unless the parties agree to a lesser number.~~ Chapters
9 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim
10 or witness, as defined in s. 950.02, the court may order that a deposition be taken by
11 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to
12 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
13 of ~~the a hearing on a termination of parental rights petition~~, the court shall make a
14 determination of the facts. At the conclusion of a hearing on a petition under s. 48.13
15 or 48.133, the court or jury shall make a determination of the facts, except that in a
16 case alleging a child or an unborn child to be in need of protection or services under
17 s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or
18 48.133 relating to whether the child or unborn child is in need of protection or
19 services that can be ordered by the court. If the court finds that the child or unborn
20 child is not within the jurisdiction of the court or, in a case alleging a child or an
21 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the
22 child or unborn child is not in need of protection or services that can be ordered by
23 the court, or if the court or jury finds that the facts alleged in the petition have not
24 been proved, the court shall dismiss the petition with prejudice.

25 **SECTION 2.** 48.31 (4) of the statutes is amended to read:

ASSEMBLY BILL 263**SECTION 2**

1 48.31 (4) The court shall make findings of fact and conclusions of law relating
2 to the allegations of a petition filed under s. 48.42. The court or jury shall make
3 findings of fact and the court shall make conclusions of law relating to the allegations
4 of a petition filed under s. 48.13; or 48.133 ~~or 48.42~~, except that the court shall make
5 findings of fact relating to whether the child or unborn child is in need of protection
6 or services ~~which~~ that can be ordered by the court. In cases alleging a child to be in
7 need of protection or services under s. 48.13 (11), the court may not find that the child
8 is suffering emotional damage unless a licensed physician specializing in psychiatry
9 or a licensed psychologist appointed by the court to examine the child has testified
10 at the hearing that in his or her opinion the condition exists, and adequate
11 opportunity for the cross-examination of the physician or psychologist has been
12 afforded. The judge may use the written reports if the right to have testimony
13 presented is voluntarily, knowingly, and intelligently waived by the guardian ad
14 litem or legal counsel for the child and the parent or guardian. In cases alleging a
15 child to be in need of protection or services under s. 48.13 (11m) or an unborn child
16 to be in need of protection or services under s. 48.133, the court may not find that the
17 child or the expectant mother of the unborn child is in need of treatment and
18 education for needs and problems related to the use or abuse of alcohol beverages,
19 controlled substances, or controlled substance analogs and its medical, personal,
20 family, or social effects unless an assessment for alcohol and other drug abuse that
21 conforms to the criteria specified under s. 48.547 (4) has been conducted by an
22 approved treatment facility.

23 **SECTION 3.** 48.41 (2) (bm) of the statutes is created to read:

24 48.41 (2) (bm) 1. An adult mother or adult presumed or alleged father may
25 consent to the termination of any parental rights that he or she may have with

ASSEMBLY BILL 263

1 respect to a child who is not an Indian child as provided in par. (a) or (b) or by filing
2 with the court an affidavit of disclaimer of parental rights that is witnessed by 2
3 persons and notarized and that meets the requirements under subds. 2. to 7.

4 2. All of the following apply to the disclaimer of parental rights in an affidavit
5 under subd. 1.:

6 a. The disclaimer may not be executed after the birth of the child until 72 hours
7 after the birth of the child. The presumed or alleged father may, but the mother may
8 not, execute the disclaimer before the birth of the child.

9 b. The disclaimer, if executed by the presumed or alleged father before the birth
10 of the child, is revocable until 72 hours after the birth of the child, as provided under
11 subd. 8.

12 c. The disclaimer is irrevocable if executed 72 hours or more after the birth of
13 the child or if not revoked before 72 hours after the birth of the child, unless it was
14 obtained by fraud or duress.

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

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

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

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

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

ASSEMBLY BILL 263**SECTION 3**

1 c. The names and addresses of the guardians of the person and of the estate of
2 the child, if any.

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

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

8 f. An allegation that termination of parental rights is in the best interest of the
9 child.

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

14 h. A statement containing the information and understandings specified in
15 subd. 4.

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

17 4. An affidavit under subd. 1. shall contain a statement that the person whose
18 parental rights are being terminated has been informed of and understands all of the
19 following:

20 a. His or her potential parental rights and duties.

21 am. The parenting-related services that would be available to him or her if he
22 or she chose not to consent to the termination of his or her parental rights.

23 b. The effect of an order to terminate parental rights.

24 c. That he or she voluntarily disclaims any rights that he or she may have to
25 the child, including the right to notice of proceedings under this chapter.

ASSEMBLY BILL 263

1 d. That the disclaimer may not be executed less than 72 hours after the birth
2 of the child or executed by the mother before the birth of the child.

3 e. That the presumed or alleged father has the right to revoke a disclaimer in
4 an affidavit until 72 hours after the birth of the child.

5 f. That the disclaimer is irrevocable if the affidavit is executed 72 hours or more
6 after the birth of the child or if not not revoked before 72 hours after the birth of the
7 child, unless it was obtained by fraud or duress.

8 g. That no action to invalidate the disclaimer, including an action based on
9 fraud or duress, may be commenced more than 6 months after the date the affidavit
10 was executed, except that, if the petition to terminate parental rights is granted, no
11 action to invalidate the disclaimer may be commenced later than the time limits
12 allowed for filing a motion for relief from judgment under s. 48.46 (2).

13 5. An affidavit under subd. 1. may contain any of the following:

14 a. A waiver of process in a petition for termination of parental rights or a
15 petition for termination of parental rights joined with a petition for adoption.

16 b. If a guardian has not been appointed under s. 48.977, the nomination of the
17 department, a county department authorized to accept guardianship under s. 48.57
18 (1) (e) or (hm), or a child welfare agency licensed under s. 48.61 (5) to accept
19 guardianship to serve as guardian of the child and the individual's address.

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

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

ASSEMBLY BILL 263**SECTION 3**

1 8. To revoke a disclaimer of parental rights in an affidavit under subd. 1., the
2 alleged or presumed father shall sign a statement revoking the disclaimer of
3 parental rights that is witnessed by 2 persons and notarized. A copy of the revocation
4 shall be filed with the clerk of court. The revocation is not valid unless it is executed
5 and filed before 72 hours after the birth of the child.

6 **SECTION 4.** 48.41 (2) (cm) of the statutes is created to read:

7 48.41 (2) (cm) 1. Except as provided in subd. 2., a person who is eligible to file
8 a declaration of paternal interest in matters affecting a child under s. 48.025 and who
9 fails to do so as provided in that section is deemed to have irrevocably consented to
10 the termination of any parental rights that he may have and is deemed to have
11 disclaimed any rights that he may have to the child, including the right to notice of
12 proceedings under this subchapter.

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

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

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

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

21 **SECTION 5.** 48.415 (intro.) of the statutes is amended to read:

22 **48.415 Grounds for involuntary termination of parental rights.** (intro.)
23 At the fact-finding portion of the fact-finding and dispositional hearing the court ~~or~~
24 jury shall determine whether grounds exist for the termination of parental rights.
25 If the child is an Indian child, the court ~~or jury~~ shall also determine at the

ASSEMBLY BILL 263

1 fact-finding portion of the fact-finding and dispositional hearing whether continued
2 custody of the Indian child by the Indian child's parent or Indian custodian is likely
3 to result in serious emotional or physical damage to the Indian child under s. 48.028
4 (4) (e) 1. and whether active efforts under s. 48.028 (4) (e) 2. have been made to
5 prevent the breakup of the Indian child's family and whether those efforts have
6 proved unsuccessful, unless partial summary judgment on the grounds for
7 termination of parental rights is granted, in which case the court shall make those
8 determinations at the dispositional portion of the fact-finding and dispositional
9 hearing. Grounds for termination of parental rights shall be one of the following:

10 **SECTION 6.** 48.415 (1) (a) 4. of the statutes is created to read:

11 48.415 (1) (a) 4. That a person who is or may be the father of the child failed
12 without reasonable cause to provide care and support for the mother during her
13 pregnancy.

14 **SECTION 7.** 48.415 (1) (a) 5. of the statutes is created to read:

15 48.415 (1) (a) 5. That the parent has failed without reasonable cause to pay
16 court-ordered payments of child support.

17 **SECTION 8.** 48.415 (6) (b) of the statutes is amended to read:

18 48.415 (6) (b) In this subsection, "substantial parental relationship" means the
19 acceptance and exercise of significant responsibility for the daily supervision,
20 education, protection, and care of the child. In evaluating whether the person has
21 had a substantial parental relationship with the child, the court may consider such
22 factors, including, ~~but not limited to,~~ whether the person has ~~expressed concern for~~
23 ~~or interest in the provided care or support, care or well-being of~~ for the child, and
24 whether the person has neglected or refused to provide care or support for the child
25 ~~and whether, with respect to a person who is or may be the father of the child, the~~

ASSEMBLY BILL 263**SECTION 8**

1 person has expressed concern for or interest in the support, care or well-being of the
2 mother during her pregnancy.

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

4 48.415 (9) (a) Parenthood as a result of sexual assault, which shall be
5 established by proving that the child was conceived as a result of a sexual assault in
6 violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085. Conception
7 as a result of sexual assault as specified in this paragraph may be proved by a final
8 judgment of conviction or other evidence produced at the fact-finding portion of a
9 fact-finding and dispositional hearing under s. 48.424 indicating that the person
10 who may be the father of the child committed, during a possible time of conception,
11 a sexual assault as specified in this paragraph against the mother of the child.

12 **SECTION 10.** 48.42 (2) (a) of the statutes is amended to read:

13 48.42 (2) (a) The parent or parents of the child, unless the child's parent has
14 waived the right to notice under s. 48.41 (2) (bm) or (d).

15 **SECTION 11.** 48.42 (2) (b) (intro.) and 1. of the statutes are consolidated,
16 renumbered 48.42 (2) (b) and amended to read:

17 48.42 (2) (b) Except as provided in par. (bm), if the child is a nonmarital child
18 who is not adopted or whose parents do not subsequently intermarry under s.
19 767.803 and whose paternity has not been established: ~~1. A,~~ a person who has filed
20 an unrevoked declaration of paternal interest under s. 48.025 before the birth of the
21 child or within 14 days after the birth of the child.

22 **SECTION 12.** 48.42 (2) (b) 2. of the statutes is repealed.

23 **SECTION 13.** 48.42 (2) (b) 3. of the statutes is repealed.

24 **SECTION 14.** 48.42 (2) (bm) (intro.) and 1. of the statutes are consolidated,
25 renumbered 48.42 (2) (bm) and amended to read:

ASSEMBLY BILL 263

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

8 **SECTION 15.** 48.42 (2) (bm) 2. of the statutes is repealed.

9 **SECTION 16.** 48.422 (1) of the statutes is amended to read:

10 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
11 to terminate parental rights shall be held within 30 days after the petition is filed.
12 At the hearing on the petition to terminate parental rights the court shall determine
13 whether any party wishes to contest the petition and inform the parties of their
14 rights under ~~sub. (4) and~~ s. 48.423.

15 **SECTION 17.** 48.422 (4) of the statutes is repealed.

16 **SECTION 18.** 48.422 (5) of the statutes is amended to read:

17 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
18 continuance of the hearing for the purpose of consulting with an attorney ~~on the~~
19 ~~request for a jury trial or~~ concerning a request for the substitution of a judge.

20 **SECTION 19.** 48.422 (6) (a) of the statutes is amended to read:

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

ASSEMBLY BILL 263**SECTION 19**

1 (b) is mailed, the court shall hear testimony concerning the paternity of the child.
2 Based on the testimony, the court shall determine whether all interested parties who
3 ~~are known have been notified for whom notice is required~~ under s. 48.42 (2) and (2g)
4 (ag) have been notified. If not, the court shall adjourn the hearing and order
5 appropriate notice to be given.

6 **SECTION 20.** 48.424 (title) of the statutes is amended to read:

7 **48.424 (title) Fact-finding and dispositional hearing.**

8 **SECTION 21.** 48.424 (1) (intro.) of the statutes is amended to read:

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

12 **SECTION 22.** 48.424 (2) (intro.) of the statutes is amended to read:

13 48.424 (2) (intro.) The fact-finding and dispositional hearing shall be
14 conducted according to the procedure specified in s. 48.31 except as follows:

15 **SECTION 23.** 48.424 (3) of the statutes is amended to read:

16 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
17 shall decide whether any grounds for the termination of parental rights have been
18 proved ~~and~~, whether the allegations specified in s. 48.42 (1) (e) have been proved in
19 cases involving the involuntary termination of parental rights to an Indian child.
20 ~~The court shall decide, and~~ what disposition is in the best interest of the child.

21 **SECTION 24.** 48.424 (4) (intro.) of the statutes is amended to read:

22 48.424 (4) (intro.) The court shall hear all evidence relevant to the issues under
23 sub. (1) and to the issue of disposition under s. 48.427 before making a determination
24 of whether the parent is unfit. If grounds for the termination of parental rights are
25 found by the court ~~or jury~~, the court shall find the parent unfit. A finding of unfitness

ASSEMBLY BILL 263**SECTION 24**

1 shall not preclude a dismissal of a petition under s. 48.427 (2). ~~Except as provided~~
2 ~~in s. 48.23 (2) (b) 3., the~~ The court shall then proceed immediately to hear evidence
3 ~~and motions related to the dispositions enumerated in~~ make a disposition under s.
4 48.427. Except as provided in s. 48.42 (2g) (ag), the court may delay making a
5 determination of whether the parent is unfit and making the disposition and set a
6 date for a dispositional hearing by granting a continuance of no later longer than 45
7 days after the fact-finding hearing if any of the following apply:

8 **SECTION 25.** 48.424 (5) of the statutes is amended to read:

9 48.424 (5) If the court delays making a determination of whether the parent
10 is unfit and making a permanent disposition under sub. (4), it may transfer
11 temporary custody of the child to an agency for placement of the child until the
12 fact-finding and dispositional hearing is continued. Placement of an Indian child
13 under this subsection shall comply with the order of placement preference under s.
14 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the agency finds good cause,
15 as described in s. 48.028 (7) (e), for departing from that order.

16 **SECTION 26.** 48.427 (1m) of the statutes is amended to read:

17 48.427 (1m) In addition to any evidence presented under sub. (1), the court
18 shall give the foster parent or other physical custodian described in s. 48.62 (2) of the
19 child a right to be heard at the dispositional portion of the fact-finding and
20 dispositional hearing by permitting the foster parent or other physical custodian to
21 make a written or oral statement during the dispositional portion of the fact-finding
22 and dispositional hearing, or to submit a written statement prior to disposition,
23 relevant to the issue of disposition. A foster parent or other physical custodian
24 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
25 a right to be heard under this subsection does not become a party to the proceeding

ASSEMBLY BILL 263**SECTION 26**

1 on which the hearing is held solely on the basis of receiving that notice and right to
2 be heard.

3 **SECTION 27.** 48.828 of the statutes is created to read:

4 **48.828 Consent to adoption. (1)** Except as provided in subs. (2) and (3), a
5 person who is eligible to file a declaration of paternal interest in matters affecting
6 a child under s. 48.025 and who fails to do so as provided in that section is deemed
7 to have irrevocably consented to the adoption of the child and to have disclaimed any
8 rights that he may have to the child, including the right to notice of proceedings
9 under this subchapter.

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

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

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

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

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

19 **SECTION 28.** 48.837 (5) of the statutes is amended to read:

20 48.837 (5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or
21 over, and each petitioner shall attend the hearing on the petition under sub. (2). The
22 child, if he or she is 12 years of age or over, and each parent having custody of the child
23 shall attend the hearing on the petition under sub. (3), except that a parent who has
24 consented to the termination of his or her parental rights in writing under s. 48.41
25 (2) (b), (bm), or (d) is not required to attend the hearing. If the parent who has custody

ASSEMBLY BILL 263

1 of the child consents and the court approves, the proposed adoptive parents may be
2 present at the hearing on the petition under sub. (3). The court may, for good cause,
3 waive the requirement that the child attend either of the hearings.

4 **SECTION 29.** 48.913 (1) (em) of the statutes is created to read:

5 48.913 (1) (em) Services provided in connection with the adoption by a private
6 child placing agency, as defined in s. 48.99 (2) (p), operating lawfully under the laws
7 of another state.

8 **SECTION 30. Initial applicability.**

9 (1) ELIMINATION OF JURY TRIALS AND COMBINING FACT-FINDING AND DISPOSITIONAL
10 HEARINGS IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The treatment of ss. 48.31
11 (2) and (4), 48.415 (intro.) and (9) (a), 48.422 (1), (4), and (5), 48.424 (title), (1) (intro.),
12 (2) (intro.), (3), (4) (intro.), and (5), and 48.427 (1m) first applies to a termination of
13 parental rights proceeding in which the initial hearing under s. 48.422 (1) is held on
14 the effective date of this subsection.

15 (2) TERMINATION OF PARENTAL RIGHTS. The treatment of ss. 48.41 (2) (cm), 48.415
16 (1) (a) 4. and 5. and (6) (b), 48.42 (2) (b) (intro.), 1., 2., and 3. and (bm) (intro.), 1., and
17 2., and 48.422 (6) (a) first applies to a termination of parental rights proceeding for
18 which the petition is filed on the effective date of this subsection.

19 (3) CONSENT TO ADOPTION. The treatment of s. 48.828 first applies to an adoption
20 for which the petition is filed on the effective date of this subsection.

21 (END)