



## 2023 ASSEMBLY BILL 107

March 14, 2023 - Introduced by Representatives MAXEY, ARMSTRONG, ALLEN, BEHNKE, BRANDTJEN, KNODL, MURPHY, MURSAU, ROZAR, WICHGERS and RETTINGER, cosponsored by Senators JACQUE, CABRAL-GUEVARA and TOMCZYK. Referred to Committee on Family Law.

1     **AN ACT to amend** 48.41 (1), 48.42 (2) (a), 48.46 (2), 48.837 (5) and 48.91 (3); and  
2           **to create** 48.41 (2) (bm) and 48.913 (1) (em) of the statutes; **relating to:** a  
3           disclaimer of parental rights and payments allowed in connection with an  
4           adoption.

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### *Analysis by the Legislative Reference Bureau*

This bill 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. The bill also allows payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.

#### ***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 and if no participant in the court proceeding knows or has reason to know that the child is an Indian child. A minor may use such an affidavit of disclaimer only after the TPR petition has been filed, he or she has been offered legal counseling, and he or she has been appointed a guardian ad litem and only if the guardian ad litem approves the disclaimer. The

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affidavit must comply with certain requirements, including that it must be witnessed 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. The bill requires the court to review the affidavit and make findings on whether it meets all of the requirements.

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 and may be executed by either parent 120 hours or more after the birth until the child's first birthday; however, the affidavit may not be executed by either parent from birth until 120 hours after the birth or on or after the child's first birthday.

Under the bill, if executed by the father or alleged or presumed father before the child's birth, the disclaimer is revokable for any reason until 72 hours after execution or 120 hours after the birth, whichever is later. If executed by the mother, the disclaimer is revokable for any reason until 72 hours after execution. If not revoked by the applicable time limit, 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 three months after the affidavit was executed. If parental rights to a child are terminated based upon such a disclaimer of parental rights, the bill prohibits a court from entering an order granting adoption of the child until three months have passed since the affidavit was executed.

The bill requires the agency making the placement of the child for adoption, whether the agency is the Department of Children and Families, the county department of human services or social services, or a licensed child welfare agency, to offer both counseling and legal counseling to the person disclaiming his or her parental rights, at the agency's expense, prior to execution of the affidavit. The person must acknowledge in the affidavit that he or she has been offered these counseling and legal counseling sessions and whether or not he or she accepted them.

***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 and, where applicable, in compliance with the federal Indian Child Welfare Act, as certified to DCF. Under the bill, a private child placing agency means 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.

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

1           **SECTION 1.** 48.41 (1) of the statutes is amended to read:

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1           48.41 (1) The court may terminate the parental rights of a parent after the  
2           parent has given his or her consent as specified in this section. When such voluntary  
3           consent is given as provided in ~~this section~~ sub. (2) (a), (b), or (c) to (e) or when an  
4           affidavit of disclaimer of parental rights executed under sub. (2) (bm) is irrevocable,  
5           the judge may proceed immediately to a disposition of the matter after considering  
6           the standard and factors specified in s. 48.426.

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

8           48.41 (2) (bm) 1. Subject to subd. 1m., a mother, father, or presumed or alleged  
9           father may consent to the termination of any parental rights that he or she may have  
10          with respect to a child who is under one year of age if no participant in the court  
11          proceeding, including the mother, father, or presumed or alleged father, knows or has  
12          reason to know that the child is an Indian child by the method provided in par. (a)  
13          or (b) or by filing with the court an affidavit of disclaimer of parental rights that is  
14          signed by 2 witnesses and notarized and that meets the requirements under subds.  
15          2. to 8.

16          1m. A minor may consent to the termination of any parental rights that he or  
17          she may have with respect to a child by using an affidavit of disclaimer under subd.  
18          1. only after the petition to terminate parental rights has been filed, the agency has  
19          offered the minor legal counseling under subd. 11., and he or she has been appointed  
20          a guardian ad litem and only if the guardian ad litem approves the disclaimer.

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

23          a. The affidavit may not be executed after the birth of the child until 120 hours  
24          after the birth of the child and may not be executed on or after the child's first

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1 birthday. The father or presumed or alleged father may, but the mother may not,  
2 execute the affidavit before the birth of the child.

3 b. If executed by the father or presumed or alleged father, the affidavit is  
4 revocable for any reason until 72 hours after execution or 120 hours after the birth  
5 of the child, whichever is later, as provided under subd. 9. If executed by the mother,  
6 the affidavit is revocable for any reason until 72 hours after execution, as provided  
7 in subd. 9.

8 c. The affidavit is irrevocable if not revoked for any reason by the mother,  
9 father, or presumed or alleged father by the applicable time limit provided under  
10 subd. 2. b., unless it was obtained by fraud or duress.

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

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

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

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

18 c. The names and addresses of the guardians of the person whose parental  
19 rights are being terminated, if that person is a minor, and of the estate of the child,  
20 if any.

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

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

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- 1           f. An allegation that termination of parental rights is in the best interest of the  
2 child.
- 3           g. The name and county of residence of any other parent or presumed or alleged  
4 father or a statement that the child has no other parent or presumed or alleged  
5 father.
- 6           h. If applicable, a statement that the parental rights of the other parent or  
7 presumed or alleged father have been terminated by death or court order.
- 8           i. A statement containing the information and understandings specified in  
9 subd. 4.
- 10          j. A statement that there is or is not any reason to believe that the child is an  
11 Indian child.
- 12          k. The date and time that the affidavit is executed.
- 13          4. An affidavit under subd. 1. shall contain a statement in substantially the  
14 following form:
- 15           “I have been informed of and understand all of the following:
- 16           A. That a court order terminating parental rights will permanently end all  
17 legal rights and duties that exist between me and the child, such as the duty to  
18 support, the right to custody and visitation, and the right to inherit.
- 19           B. That there are parenting-related services that would be available to me if  
20 I chose not to consent to the termination of my parental rights.
- 21           C. That this affidavit may not be executed less than 120 hours after the birth  
22 of the child, on or after the child’s first birthday, or by the child’s mother before the  
23 birth of the child.
- 24           D. That the child’s father or presumed or alleged father has the right to revoke  
25 an affidavit of disclaimer for any reason until 72 hours after execution or 120 hours

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1 after the birth of the child, whichever is later, and the child's mother may revoke the  
2 affidavit for any reason until 72 hours after execution.

3 E. That the affidavit is irrevocable if not revoked for any reason by the mother,  
4 father, or presumed or alleged father by the applicable time limit under D., above,  
5 unless it was obtained by fraud or duress.

6 F. That no action to invalidate the affidavit, including an action based on fraud  
7 or duress, may be commenced more than 3 months after the date the affidavit was  
8 executed.

9 G. Prior to executing this affidavit I have been offered counseling at the  
10 expense of the agency that is placing the child for adoption. I have accepted/refused  
11 (circle one) this counseling.

12 H. If I am younger than 18 years of age, prior to executing this affidavit I have  
13 been offered legal counseling at the expense of the agency that is placing the child  
14 for adoption. I have accepted/refused (circle one) this legal counseling.”

15 5. An affidavit under subd. 1. shall contain a statement that the person whose  
16 parental rights are being terminated voluntarily disclaims any rights that he or she  
17 may have to the child, including the right to notice of proceedings under this chapter.

18 6. If a guardian has not been appointed under s. 48.979, an affidavit under  
19 subd. 1. may contain the nomination of the department, a county department  
20 authorized to accept guardianship under s. 48.57 (1) (e) or (hm), or a child welfare  
21 agency licensed under s. 48.61 (5) to accept guardianship to serve as guardian of the  
22 child and the nominated guardian's address.

23 6m. The person disclaiming his or her parental rights shall choose at least one  
24 of the witnesses to the affidavit, and that witness shall certify that he or she was

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1 chosen by that person. Each witness to the affidavit shall certify to all of the  
2 following:

3 a. That he or she has no professional or fiduciary interest in the disclaimer or  
4 the adoption of the child.

5 b. That he or she has knowledge of the relationship between the person  
6 disclaiming his or her parental rights and the child.

7 c. That he or she has discussed the decision to execute the affidavit with the  
8 person disclaiming his or her parental rights and that, to the best of the witness's  
9 knowledge, the affidavit is being signed voluntarily.

10 d. That he or she is neutral.

11 7. A copy of the affidavit shall be provided to the person whose parental rights  
12 are being terminated at the time he or she signs the affidavit.

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

16 9. To revoke a disclaimer of parental rights in an affidavit under subd. 1., the  
17 mother, father, or presumed or alleged father shall sign a statement revoking the  
18 disclaimer of parental rights that is notarized. A copy of the revocation shall be filed  
19 with the clerk of court. A revocation is not valid unless it is executed by the father  
20 or presumed or alleged father before 72 hours after execution of the affidavit or 120  
21 hours after the birth of the child, whichever is later, or executed by the mother before  
22 72 hours after execution of the affidavit.

23 10. The agency that is making the placement of the child for adoption shall offer  
24 counseling to a mother, father, or presumed or alleged father who intends to execute

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1 an affidavit under this paragraph prior to executing the affidavit with a counselor  
2 who is qualified to provide such counseling.

3 11. The agency that is making the placement of the child for adoption shall offer  
4 to a mother, father, or presumed or alleged father who is a minor and who intends  
5 to execute an affidavit under this paragraph legal counseling with an attorney who  
6 does not represent the agency or adoptive parents prior to executing the affidavit.

7 12. An affidavit of disclaimer of parental rights under this paragraph is not  
8 effective if it would violate s. 48.028 or the federal Indian Child Welfare Act, 25 USC  
9 1901 to 1963, or any regulations promulgated thereunder or if the agency responsible  
10 for securing the adoption of the child knows or has reason to know the child is an  
11 Indian child.

12 13. The court shall review an affidavit of disclaimer of parental rights to ensure  
13 it meets the requirements under subds. 2 to 8. The court shall make findings on the  
14 record stating whether the affidavit meets those requirements and whether all  
15 participants in the court proceeding, including the mother, father, or presumed or  
16 alleged father, have stated that they do not know or have reason to know that the  
17 child is an Indian child.

18 **SECTION 3.** 48.42 (2) (a) of the statutes is amended to read:

19 48.42 (2) (a) The parent or parents of the child, unless the child's parent has  
20 waived the right to notice under s. 48.41 (2) (d), or the child's parent or presumed or  
21 alleged father has waived the right to notice under s. 48.41 (2) (bm).

22 **SECTION 4.** 48.46 (2) of the statutes is amended to read:

23 48.46 (2) A parent who has consented to the termination of his or her parental  
24 rights under s. 48.41 or who did not contest the petition initiating the proceeding in  
25 which his or her parental rights were terminated may move the court for relief from

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1 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any  
2 such motion shall be filed within 30 days after the entry of the judgment or order  
3 terminating parental rights, unless the parent files a timely notice of intent to  
4 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall  
5 be filed within the time permitted by s. 809.107 (5). A motion under this subsection  
6 does not affect the finality or suspend the operation of the judgment or order  
7 terminating parental rights. A parent who has consented to the termination of his  
8 or her parental rights to an Indian child under s. 48.41 (2) (e) may also move for relief  
9 from the judgment under s. 48.028 (5) (c) or (6). A parent who has consented to the  
10 termination of his or her parental rights to a child by filing an affidavit of disclaimer  
11 of parental rights under s. 48.41 (2) (bm) may also bring an action to invalidate the  
12 affidavit as provided under s. 48.41 (2) (bm) 2. d. Motions under this subsection or  
13 s. 48.028 (5) (c) or (6) or 48.41 (2) (bm) 2. d. and appeals to the court of appeals shall  
14 be the exclusive remedies for such a parent to obtain a new hearing in a termination  
15 of parental rights proceeding.

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

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

