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1 **AN ACT** *to amend* 48.83 (1) and 48.90 (1) (intro.) of the statutes; **relating to:** who
2 may file an adoption petition.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Permanency for Young Children in the Child Welfare System.

Background

Under current law, if the rights of both parents or of the only living parent are terminated by a termination of parental rights (TPR) order, the court must transfer guardianship and custody of the child to one of the following:

- A county department authorized to accept guardianship (county department).
- A child welfare agency licensed to accept guardianship (licensed child welfare agency).
- The department of children and families (DCF).
- A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payment for providing care and maintenance for the child.

Current law does not specify who may file an adoption petition. Instead, the statutes provide that an adoption petition may be filed at any time if the child has been in the petitioners’ home for 6 months or more; the petitioners have complied with all applicable requirements under current law related to adoptive placements; and if:

- One of the petitioners is a relative of the child by blood or by adoption, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents.
- The petitioner is the child’s stepparent.
- The petition is accompanied by a written approval of the guardian.

- The petitioner is the proposed adoptive parent with whom the child has been placed.

Also under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) located in the county where the proposed adoptive parent or child resides, upon the filing of a petition for adoption or for the adoptive placement of a child, has jurisdiction over the child until the petition is withdrawn, denied, or granted. The venue for an adoption petition to be filed is the county where the proposed adoptive parent or child resides at the time that the petition is filed. However, the juvenile court may transfer the case to another juvenile court in the county in which the proposed adoptive parents reside.

Bill Draft

The draft specifies that an adoption petition may be filed by the proposed adoptive parent; DCF, a county department, or a child welfare agency who is transferred guardianship and custody of a child after the child's parent had his or her rights terminated; or the district attorney, corporation counsel, or other appropriate official who represents the interests of the public. This draft also gives jurisdiction for an adoption petition to a juvenile court in a county where the TPR petition was filed and gives venue to the county where the TPR was filed.

1 **SECTION 1.** 48.83 (1) of the statutes is amended to read:

2 48.83 (1) Except as provided in s. 48.028 (3) (b), the court of the county where the
3 proposed adoptive parent or child resides, upon the filing of a petition for adoption or for the
4 adoptive placement of a child, ~~has~~ and the court of the county where the termination of parental
5 rights petition was filed under s. 48.42, have jurisdiction over the child until the petition is
6 withdrawn, denied, or granted. Venue ~~shall~~ may be in the county where the proposed adoptive
7 parent or child resides at the time the petition is filed or the county where the termination of
8 parental rights petition was filed under s. 48.42. The court may transfer the case to a court in
9 the county in which the proposed adoptive parents reside.

NOTE: This SECTION gives jurisdiction for an adoption petition to a juvenile court in a county where the TPR petition was filed and provides that venue may be in the county where the TPR was filed.

1 **SECTION 2.** 48.90 (1) (intro.) of the statutes is amended to read:

2 48.90 (1) (intro.) A proposed adoptive parent or an agency to whom guardianship and
3 custody of a child are transferred as specified under s. 48.427 (3m) (1) 1. to 4., or the district
4 attorney, corporation counsel or other appropriate official specified under s. 48.09 may file a
5 petition for adoption may be filed on behalf of a proposed adoptive parent at any time if:

NOTE: This SECTION specifies that an adoption petition may be filed by the proposed adoptive parent; DCF, a county department, or a child welfare agency who is transferred guardianship and custody of a child after the child's parent had his or her rights terminated; or the district attorney, corporation counsel, or other appropriate official who represents the interests of the public.

COMMENT: 1. The changes made in this SECTION give authority for an adoption petition to be filed by DCF, a county department, or a licensed child welfare agency if it was transferred custody and guardianship by the juvenile court. The statutes do not direct when the juvenile court must transfer guardianship and custody of a child in DCF, a county department, or a licensed welfare agency. Should the juvenile court be required to transfer guardianship and custody of a child who is in foster care to DCF or a county department once parental rights are terminated? If so, under what types of cases should guardianship and custody be transferred to DCF or a county department?

2. Under current law, after a TPR is ordered, a juvenile court may transfer guardianship and custody to a licensed child welfare agency for conducting private adoptions, in addition to DCF or a county department. Should DCF or a county department be required to file an adoption petition in specified cases if it does not have guardianship? If so, how should the statutes be amended so that DCF or a county department does not have to file an adoption petition for private adoptions?

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(END)