

1 **AN ACT** *to amend* 48.21 (5) (e) 2. (intro.), 48.23 (4), 48.355 (2) (cm) 1., 48.357 (2v)
2 (d) 1., 48.434 (4), 48.834 (1), 48.93 (1d), 938.21 (5) (e) 2. (intro.), 938.355 (2) (cm)
3 1. and 938.357 (2v) (d) 1.; and *to create* 48.23 (2r), 48.38 (4) (fg) 7., 48.434 (2m),
4 48.434 (6m), 48.923 and 938.38 (4) (fg) 6. of the statutes; **relating to:** reinstatement
5 of a biological parent’s rights, and consideration of biological family members as a
6 resource for placement or support, when a child is not allowed to return to an
7 adoptive home.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council’s Study Committee on Adoption Disruption and Dissolution.

Under current law, adoption severs an adopted child’s legal relationship with the birth parents and all relatives of the birth parents, and creates the legal relationship of parent and child between the adoptive parents and the adopted child with all of the rights, duties, and other legal consequences of a natural relationship. Current law also provides that an adoption record is confidential, except in limited circumstances.

Current law requires relatives to be considered as a resource for placement or support when a child is alleged to be in need of protection or services under either the children’s code or juvenile justice code, but does not allow consideration of a birth parent or birth relatives if the child has been adopted, due to the severed legal relationship and confidentiality of the adoption records.

This draft allows a birth parent to file a written authorization for release of birth relatives’ names and addresses if a child becomes in need of protection or services after being adopted, and requires the Department of Children and Family’s Bureau of Milwaukee Child Welfare (BMCW), a county department of human or social services (county department), or adoption agency that is providing services to the child to search for birth relatives and to consider a birth parent or birth relatives in developing a permanency plan for the child.

Additionally, for circumstances in which adoptive parents prohibit a child from residing in the home, an adopted child has re-entered the child welfare or juvenile justice system, or the child has not been adopted after the birth parent's rights were terminated, the draft creates a process and a standard for reinstatement of parental rights, based primarily on a consideration of the best interests of the child. The standard also requires that at least five years must have passed since the birth parent's rights were terminated, that the birth parent has shown by clear and convincing evidence that the birth parent has had a substantial change in circumstances that reasonably resolves the grounds for the court's former jurisdiction over the child, and that the birth parent is fit, willing, and able to parent the child. The standard for the best interests of the child is adapted from the standard given when considering a termination of parental rights, and includes consideration of the child's age, wishes, placement options, and relationship with the birth parent, and the conditions of the child's relationship with the child's adoptive parent, guardian, or legal custodian. The district attorney or corporation counsel that was the petitioner in the birth parent's termination of parental rights proceeding must be included as a party in an action to reinstate parental rights.

1 **SECTION 1.** 48.21 (5) (e) 2. (intro.) of the statutes is amended to read:

2 48.21 (5) (e) 2. (intro.) The court shall order the county department, the department in
3 a county having a population of 500,000 or more, or the agency primarily responsible for
4 providing services to the child under the custody order to conduct a diligent search in order
5 to locate and provide notice of the information specified in this subdivision to all relatives of
6 the child named under sub. (3) (f) and to all adult relatives of the child within 30 days after
7 the child is removed from the custody of the child's parent unless the child is returned to his
8 or her home within that period. If the child is an adoptee, the search for relatives shall include
9 a search for the child's birth parent and birth relatives if an authorization for release of
10 information is on file under s. 48.434 (2m). The court may also order the county department,
11 department, or agency to conduct a diligent search in order to locate and provide notice of the
12 information specified in this subdivision to all other adult individuals named under sub. (3)
13 (f) within 30 days after the child is removed from the custody of the child's parent unless the

1 child is returned to his or her home within that period. The county department, department,
2 or agency may not provide that notice to a person named under sub. (3) (f) or to an adult relative
3 if the county department, department, or agency has reason to believe that it would be
4 dangerous to the child or to the parent if the child were placed with that person or adult relative.
5 The notice shall include all of the following:

NOTE: This SECTION requires a child welfare agency that is providing services to a child who is alleged to be in need of protection or services to include birth relatives in the search for adult relatives that is required under a temporary physical custody order, when the child has previously been adopted, if the release of information has been consented to by the birth parent.

6 **SECTION 2.** 48.23 (2r) of the statutes is created to read:

7 48.23 (2r) REINSTATEMENT OF PARENTAL RIGHTS; RIGHT OF BIRTH PARENT TO COUNSEL. If
8 a child is the subject of a proceeding for reinstatement of parental rights under s. 48.923, the
9 birth parent who is petitioning under that section shall have the right to be represented by
10 counsel as provided in sub. (4).

NOTE: This SECTION gives a birth parent who is the petitioner in an action for reinstatement of parental rights to be represented by counsel.

11 **SECTION 3.** 48.23 (4) of the statutes is amended to read:

12 48.23 (4) PROVIDING COUNSEL. If a child has a right to be represented by counsel or is
13 provided counsel at the discretion of the court under this section and counsel is not knowingly
14 and voluntarily waived, the court shall refer the child to the state public defender and counsel
15 shall be appointed by the state public defender under s. 977.08 without a determination of
16 indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the state
17 public defender shall appoint counsel within 24 hours after that referral. Any counsel
18 appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any
19 appeal brought under s. 809.105 unless the child requests substitution of counsel or

1 extenuating circumstances make it impossible for counsel to continue to represent the child.
2 In any situation under sub. (2), (2g), ~~or (2m)~~, or (2r) in which a parent 18 years of age or over
3 or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly
4 and voluntarily waived; and it appears that the parent or adult expectant mother is unable to
5 afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer
6 the parent or adult expectant mother to the authority for indigency determinations specified
7 under s. 977.07 (1). In any other situation under this section in which a person has a right to
8 be represented by counsel or is provided counsel at the discretion of the court, competent and
9 independent counsel shall be provided and reimbursed in any manner suitable to the court
10 regardless of the person's ability to pay, except that the court may not order a person who files
11 a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the
12 respondent in that petition.

NOTE: This SECTION requires a court in an action for reinstatement of parental rights to refer the birth parent to the state public defender's office for a determination of whether the birth parent is eligible for representation by that office.

13 **SECTION 4.** 48.355 (2) (cm) 1. of the statutes is amended to read:

14 48.355 (2) (cm) 1. Subject to subd. 2., the court shall order the county department, the
15 department in a county having a population of 500,000 or more, or the agency primarily
16 responsible for providing services to the child under the dispositional order to conduct a
17 diligent search in order to locate and provide notice of the information specified in s. 48.21
18 (5) (e) 2. a. to e. to all relatives of the child named under s. 48.335 (6) and to all adult relatives,
19 as defined in s. 48.21 (5) (e) 1., of the child within 30 days after the child is removed from the
20 custody of the child's parent unless the child is returned to his or her home within that period.
21 If the child is an adoptee, the search for relatives shall include a search for the child's birth

1 parent and birth relatives if an authorization for release of information is on file under s. 48.434
2 (2m). The court may also order the county department, department, or agency to conduct a
3 diligent search in order to locate and provide notice of that information to all other adult
4 individuals named under s. 48.335 (6) within 30 days after the child is removed from the
5 custody of the child's parent unless the child is returned to his or her home within that period.
6 The county department, department, or agency may not provide that notice to a person named
7 under s. 48.335 (6) or to an adult relative if the county department, department, or agency has
8 reason to believe that it would be dangerous to the child or to the parent if the child were placed
9 with that person or adult relative.

NOTE: This SECTION requires a child welfare agency that is providing services to a child who is in need of protection or services to include birth relatives in the search for adult relatives that is required under a dispositional order, when the child has previously been adopted, if the release of information has been consented to by the birth parent.

10 **SECTION 5.** 48.357 (2v) (d) 1. of the statutes is amended to read:

11 48.357 (2v) (d) 1. Subject to subd. 2., the court shall order the county department, the
12 department in a county having a population of 500,000 or more, or the agency primarily
13 responsible for implementing the dispositional order to conduct a diligent search in order to
14 locate and provide notice of the information specified in s. 48.21 (5) (e) 2. a. to e. to all relatives
15 of the child named under sub. (1) (c) 2m. or (2m) (bm) and to all adult relatives, as defined
16 in s. 48.21 (5) (e) 1., of the child within 30 days after the child is removed from the custody
17 of the child's parent unless the child is returned to his or her home within that period. If the
18 child is an adoptee, the search for relatives shall include a search for the child's birth parent
19 and birth relatives if an authorization for release of information is on file under s. 48.434 (2m).

20 The court may also order the county department, department, or agency to conduct a diligent
21 search in order to locate and provide notice of that information to all other adult individuals

1 named under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the child is removed from the
2 custody of the child's parent unless the child is returned to his or her home within that period.
3 The county department, department, or agency may not provide that notice to a person named
4 under sub. (1) (c) 2m. or (2m) (bm) or to an adult relative if the county department, department,
5 or agency has reason to believe that it would be dangerous to the child or to the parent if the
6 child were placed with that person or adult relative.

NOTE: This SECTION requires a child welfare agency that is providing services to a child who is in need of protection or services to include birth relatives in the search for adult relatives that is required under an order for a change in placement, when the child has previously been adopted, if the release of information has been consented to by the birth parent.

7 **SECTION 6.** 48.38 (4) (fg) 7. of the statutes is created to read:

8 48.38 (4) (fg) 7. Placement of the child with a birth parent, if at least 5 years have passed
9 since an order terminating the birth parent's rights was entered, for reinstatement of parental
10 rights under s. 48.923.

NOTE: This SECTION provides that, if a child is in need of protection or services, and at least five years have passed since the birth parent's rights had been terminated, the child's permanency plan may include placement with the birth parent for reinstatement of parental rights under the procedure created by this draft.

11 **SECTION 7.** 48.434 (2m) of the statutes is created to read:

12 48.434 (2m) Any birth parent of a child may file with the agency that placed the child
13 for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837
14 (6) (d) a written authorization for the agency to release any available information about the
15 identity and location of the birth parent and any birth relative of the child to the department,
16 a county department under s. 48.57 (1) (e) or (hm), or an agency that is primarily responsible
17 for providing services to the child after an adoption if the child is alleged to be in need of

1 protection or services under s. 48.13 or is alleged to be a juvenile in need of protection or
2 services under s. 938.13.

NOTE: This SECTION allows a birth parent to file with BMCW, a county department, or adoption agency a written authorization that consents to release of the names and addresses of the birth parent and other birth relatives to an agency that is providing services to the child after adoption, if the child is alleged to be in need of protection or services under either the children's code or the juvenile justice code.

3 **SECTION 8.** 48.434 (4) of the statutes is amended to read:

4 48.434 (4) A written authorization filed under sub. (2), (2m), or (3) may be revoked at
5 any time by notifying the agency in writing.

NOTE: This SECTION allows a birth parent to revoke a written authorization for release of information at any time.

6 **SECTION 9.** 48.434 (6m) of the statutes is created to read:

7 48.434 (6m) Upon request of the department, a county department under s. 48.57 (1)
8 (e) or (hm), or an agency that is primarily responsible for providing services to the child, the
9 agency receiving the request shall provide to the requester any available information about the
10 identity and location of a birth parent and other birth relatives of the child if the agency has
11 on file an unrevoked written authorization filed by the birth parent under sub. (2m) authorizing
12 the release of that information to the requester.

NOTE: This SECTION requires an agency to release the names and addresses of the birth parent and other birth relatives to an agency that is providing services to the child after adoption, if a written authorization from the birth parent is on file for the release of that information.

13 **SECTION 10.** 48.834 (1) of the statutes is amended to read:

14 48.834 (1) **PLACEMENT WITH RELATIVES.** Before placing a child for adoption under s.
15 48.833, the department, county department under s. 48.57 (1) (e) or (hm), or child welfare
16 agency making the placement shall consider the availability of a placement for adoption with

1 a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38
2 or who is otherwise known by the department, county department, or child welfare agency.
3 If the child has previously been adopted, that consideration shall include consideration of a
4 placement for adoption with a birth relative of the child who is so identified or known.

NOTE: This SECTION requires BMCW, a county department, or adoption agency to consider the availability of placement with a birth relative, for a child after adoption if the child is alleged to be in need of protection or services under either the children's code or the juvenile justice code, before placing a child for adoption.

5 **SECTION 11.** 48.923 of the statutes is created to read:

6 **48.923 Reinstatement of parental rights. (1) PETITION.** (a) A petition for
7 reinstatement of a birth parent's rights may be filed if all of the following apply:

8 1. At least 5 years have passed since an order terminating parental rights was entered
9 under s. 48.43.

10 2. The child has not been adopted, or, if the child has been adopted, any of the following
11 apply:

12 a. The adoptive parent or parents will not allow the child to reside in the adoptive home.

13 b. At the time of filing the petition, a court has jurisdiction over the child under s. 48.13
14 or 938.13.

15 3. Concurrent with the prior proceeding to terminate the birth parent's rights, a court
16 had jurisdiction over the child under s. 48.13 or 938.13.

17 (b) A petition under this section may be filed by the child if 12 years of age or older,
18 or, for a child of any age, by a guardian ad litem for the child, the child's birth parent, a district
19 attorney, or corporation counsel.

20 (c) The petition shall be entitled "In the interest of ... (child's name), a person under the
21 age of 18", and shall specify:

- 1 1. The name, birth date, and address of the child.
- 2 2. The names and addresses of the child's adoptive parent or parents, guardian, or legal
- 3 custodian.
- 4 3. The name and address of the birth parent for whom reinstatement of parental rights
- 5 is sought.
- 6 4. The name and address of the child's guardian ad litem, or last appointed guardian ad
- 7 litem, if any has been appointed.
- 8 5. The office of district attorney or corporation counsel that filed the petition for
- 9 termination of the birth parent's rights.
- 10 6. The date that the birth parent's rights were terminated.
- 11 7. The grounds upon which the birth parent's rights were terminated, or, if those rights
- 12 were terminated voluntarily and a court formerly had jurisdiction over the child under s. 48.13
- 13 or 938.13, the grounds upon which the court formerly had that jurisdiction.
- 14 8. The birth parent's substantial change in circumstances since parental rights were
- 15 terminated.
- 16 9. The birth parent's desire to have parental rights reinstated.
- 17 (d) The summons and petition shall be served on all parties under par. (c) 1. to 5.
- 18 **(2) TEMPORARY ORDER.** Unless placement of the child is subject to jurisdiction under s.
- 19 48.13 or 938.13, the court may issue a temporary order during the pendency of the action for
- 20 the physical placement of the child with the birth parent. The order may include conditions
- 21 on placement, and may be revoked for good cause upon motion of any party.
- 22 **(3) HEARINGS.** (a) Hearings under this section shall be to the court.
- 23 (b) The court may exclude the child from hearings under this section.

1 (c) Prior to the initial hearing under this section, the court shall inform the birth parent
2 of the right to counsel under s. 48.23.

3 (4) DISPOSITION. (a) The court may grant the reinstatement of a petitioner's parental
4 rights if the petitioner has proven all of the following by clear and convincing evidence:

5 1. Reinstatement of parental rights is in the best interests of the child.

6 2. The birth parent has had a substantial change in circumstances that reasonably
7 resolves the grounds upon which the birth parent's rights were terminated, or, if those rights
8 were terminated voluntarily and a court formerly had jurisdiction over the child under s. 48.13
9 or 938.13, the grounds upon which the court formerly had that jurisdiction.

10 3. The birth parent is fit, willing, and able to parent the child.

11 4. At least 5 years have passed since an order terminating the petitioner's parental rights
12 was entered under s. 48.43.

13 5. The child has not been adopted, or, if the child has been adopted, any of the following
14 apply:

15 a. The adoptive parent or parents will not allow the child to reside in the adoptive home.

16 b. At the time of filing the petition, a court has jurisdiction over the child under s. 48.13
17 or 938.13.

18 6. Concurrent with the prior proceeding to terminate the birth parent's rights, a court
19 had jurisdiction over the child under s. 48.13 or 938.13.

20 (b) In considering the best interests of the child under this section, the court shall
21 consider all of the following:

22 1. The likelihood of finding any other safe and appropriate permanent placement option
23 for the child.

1 2. The age and health of the child, both at the time the petition is being considered and,
2 if applicable, at the time the child was removed from the home.

3 3. Whether the child has a substantial relationship with the birth parent and whether it
4 would be harmful to the child not to reinstate that relationship.

5 4. The wishes of the child, which may be communicated by the child, or through the
6 child's guardian ad litem or other appropriate professional.

7 5. The duration of the separation of the birth parent from the child.

8 6. Whether the child will be able to enter into a more stable and permanent family
9 relationship as a result of the reinstatement, taking into account the conditions of the child's
10 relationship with the child's adoptive parent, guardian, or legal custodian.

11 7. Any other factor that the court determines is relevant to the best interests of the child.

12 **(5) EFFECT OF REINSTATEMENT.** (a) After the order for reinstatement of parental rights
13 is entered, the relation of parent and child and all the rights, duties and other legal
14 consequences of the natural relation of child and parent thereafter exists between the child and
15 the birth parent.

16 (b) After the order for reinstatement of parental rights is entered, the relationship of
17 parent and child between the child and the adoptive parent, guardian, or legal custodian, and
18 the relationship between the child and all persons whose relationship to the child is derived
19 through the adoptive parent, shall be completely altered and all the rights, duties, and other
20 legal consequences of those relationships shall cease to exist.

NOTE: For circumstances in which adoptive parents prohibit a child from residing in the home, an adopted child has re-entered the child welfare or juvenile justice system, or a child has not been adopted after the birth parent's rights were terminated, this SECTION creates a process and a standard for reinstatement of parental rights, based primarily on a consideration of the best interests of the child. The standard also requires that at least five years must have passed since the birth parent's rights

were terminated, that the birth parent has shown by clear and convincing evidence that the birth parent has had a substantial change in circumstances that reasonably resolves the grounds for the court's former jurisdiction over the child, and that the birth parent is fit, willing, and able to parent the child. The standard for the best interests of the child is adapted from the standard given when considering a termination of parental rights, and includes consideration of the child's age, wishes, placement options, and relationship with the birth parent, and the conditions of the child's relationship with the child's adoptive parent, guardian, or legal custodian.

1 **SECTION 12.** 48.93 (1d) of the statutes is amended to read:

2 48.93 **(1d)** All records and papers pertaining to an adoption proceeding shall be kept
3 in a separate locked file and may not be disclosed except under sub. (1g), (1r), ~~or (1v)~~, or (1x),
4 s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of the court for good
5 cause shown.

NOTE: This SECTION adds a reference to a search for birth relatives among the exceptions from the general requirement that all records relating to an adoption are confidential.

6 **SECTION 13.** 938.21 (5) (e) 2. (intro.) of the statutes is amended to read:

7 938.21 **(5)** (e) 2. (intro.) The court shall order the county department or agency
8 primarily responsible for providing services to the juvenile under the custody order to conduct
9 a diligent search in order to locate and provide notice of the information specified in this
10 subdivision to all relatives of the juvenile named under sub. (2) (e) or (3) (f) and to all adult
11 relatives of the juvenile within 30 days after the juvenile is removed from the custody of the
12 juvenile's parent unless the juvenile is returned to his or her home within that period. If the
13 child is an adoptee, the search for relatives shall include a search for the child's birth parent
14 and birth relatives if an authorization for release of information is on file under s. 48.434 (2m).
15 The court may also order the county department or agency to conduct a diligent search in order
16 to locate and provide notice of the information specified in this subdivision to all other adult

1 individuals named under sub. (2) (e) or (3) (f) within 30 days after the juvenile is removed from
2 the custody of the juvenile's parent unless the juvenile is returned to his or her home within
3 that period. The county department or agency may not provide that notice to a person named
4 under sub. (2) (e) or (3) (f) or to an adult relative if the county department or agency has reason
5 to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed
6 with that person or adult relative. The notice shall include all of the following:

NOTE: This SECTION requires a child welfare agency that is providing services to a juvenile who is alleged to be in need of protection or services to include birth relatives in the search for adult relatives that is required under a temporary placement order, when the juvenile has previously been adopted, if the release of information has been consented to by the birth parent.

7 **SECTION 14.** 938.355 (2) (cm) 1. of the statutes is amended to read:

8 938.355 (2) (cm) 1. Subject to subd. 2., the court shall order the county department or
9 the agency primarily responsible for providing services to the juvenile under the dispositional
10 order to conduct a diligent search in order to locate and provide notice of the information
11 specified in s. 938.21 (5) (e) 2. a. to e. to all relatives of the juvenile named under s. 938.335
12 (6) and to all adult relatives, as defined in s. 938.21 (5) (e) 1., of the juvenile within 30 days
13 after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is
14 returned to his or her home within that period. If the child is an adoptee, the search for relatives
15 shall include a search for the child's birth parent and birth relatives if an authorization for
16 release of information is on file under s. 48.434 (2m). The court may also order the county
17 department or agency to conduct a diligent search in order to locate and provide notice of that
18 information to all other adult individuals named under s. 938.335 (6) within 30 days after the
19 juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned
20 to his or her home within that period. The county department or agency may not provide that

1 notice to a person named under s. 938.335 (6) or to an adult relative if the county department
2 or agency has reason to believe that it would be dangerous to the juvenile or to the parent if
3 the juvenile were placed with that person or adult relative.

NOTE: This SECTION requires a child welfare agency that is providing services to a juvenile who is in need of protection or services to include birth relatives in the search for adult relatives that is required under a dispositional order, when the juvenile has previously been adopted, if the release of information has been consented to by the birth parent.

4 **SECTION 15.** 938.357 (2v) (d) 1. of the statutes is amended to read:

5 938.357 (2v) (d) 1. Subject to subd. 2., the court shall order the county department or
6 the agency primarily responsible for implementing the dispositional order to conduct a
7 diligent search in order to locate and provide notice of the information specified in s. 938.21
8 (5) (e) 2. a. to e. to all relatives of the juvenile named under sub. (1) (c) 2m. or (2m) (bm) and
9 to all adult relatives, as defined in s. 938.21 (5) (e) 1., of the juvenile within 30 days after the
10 juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned
11 to his or her home within that period. If the child is an adoptee, the search for relatives shall
12 include a search for the child's birth parent and birth relatives if an authorization for release
13 of information is on file under s. 48.434 (2m). The court may also order the county department
14 or agency to conduct a diligent search in order to locate and provide notice of that information
15 to all other adult individuals named under sub. (1) (c) 2m. or (2m) (bm) within 30 days after
16 the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned
17 to his or her home within that period. The county department or agency may not provide that
18 notice to a person named under sub. (1) (c) 2m. or (2m) (bm) or to an adult relative if the county
19 department or agency has reason to believe that it would be dangerous to the juvenile or to the
20 parent if the juvenile were placed with that person or adult relative.

