

1 **AN ACT** *to amend* 48.426 (3) (c) and 48.92 (2); and *to create* 48.425 (1) (h), 48.43 (2)
 2 (c) and 48.905 of the statutes; **relating to:** agreement by adoptive family for
 3 postadoption contact with the child’s birth parent.

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, the Wisconsin statutes do 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”. Under current law, a termination of parental rights order and an adoption permanently severs the child’s legal relationship with the birth parent and all relatives of the birth parent, and creates the legal relationship of parent and child between the adoptive parent and the adopted child.

However, the Wisconsin Supreme Court has stated that in a proceeding for the termination of a parent’s rights, when considering the impact on the child of severing the legal relationship, a court may, in its discretion, afford due weight to an adoptive parent’s stated intent to permit continued visitation between the child and the parent or other relatives, while bearing in mind that such a promise is legally unenforceable after the termination of parental rights and adoption. [*State v. Margaret H.*, 2000 WI 42, par. 29–30.]

This draft creates a statutory procedure that allows a proposed adoptive parent and former parent to enter into an agreement for postadoption contact privileges, if the proposed adoptive parent so chooses. The draft requires a court in a proceeding for the termination of a parent’s rights, when considering the impact on the child of severing the child’s relationship with the parent or other relatives with whom the child has a substantial relationship, to consider the terms of any such postadoption contact agreement.

Under such an agreement, a proposed adoptive parent may allow postadoption contact, which may vary in degree for the nature and frequency of the contact, with the former parent or a relative with whom the child has a substantial relationship. A court in an action to terminate

parental rights or to grant an adoption may approve a postadoption contact agreement if all of the following apply:

1. The court has received a favorable recommendation for approval of the agreement from the agency that has supervision of the child, from the child's guardian ad litem, and, if the child is an Indian child, from the Indian child's tribe.
2. 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.
3. The court determines that approval of the agreement is in the best interests of the child, considering the child's relationship with the former parent or relative and whether it would be harmful not to preserve that relationship, and considering the needs and wishes of the child and how the child's needs would be affected by the agreed-upon postadoption contact.
4. The former parent or relative has acknowledged that failure to comply with the terms of the agreement is not grounds to revoke the termination of the parent's rights or the adoption.
5. The former parent or relative and proposed adoptive parent acknowledge that, if a dispute arises as to the fulfillment of the terms of the agreement, the parties must participate, or attempt to participate, in good faith, in mediation or an alternative dispute resolution process, with the mediator or arbitrator to be selected by the adoptive parent.
6. The former parent or relative and proposed adoptive parent state that the parties understand the terms of the agreement, that the agreement was entered into voluntarily, that no promises or threats were made to coerce a party to enter into the agreement, and that no representations were relied upon other than those contained in the agreement.

This draft allows the adoptive parent and former parent or relative to agree to modify the terms of the agreement, if the adoptive parent so chooses. The stipulation may be approved by a court, without a hearing, if it finds that the modification is in the best interests of the child.

Additionally, this draft 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 finds that doing so is in the best interests of the child and that there has been a substantial change in circumstances since the agreement had been approved.

Lastly, this draft 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 terms of the agreement if it finds that enforcement is in the best interests of the child.

1 **SECTION 1.** 48.425 (1) (h) of the statutes is created to read:

2 48.425 (1) (h) A statement as to whether a postadoption contact agreement has been
3 entered into under s. 48.905. If such an agreement has been entered into, the agency or tribal
4 child welfare department shall attach a copy of the agreement to the report.

NOTE: This SECTION requires a child welfare agency to state in its report to the court in a proceeding for termination of parental rights whether or not a postadoption contact agreement has been entered into, and, if entered into, to include a copy with the report.

5 **SECTION 2.** 48.426 (3) (c) of the statutes is amended to read:

6 48.426 (3) (c) Whether the child has substantial relationships with the parent or other
7 family members, and whether it would be harmful to the child to sever ~~these~~ those
8 relationships. In determining whether it would be harmful to the child to sever those
9 relationships, the court shall consider the terms of any postadoption contact agreement that
10 has been entered into under s. 48.905.

NOTE: This SECTION requires a court when determining the disposition of a proceeding for termination of parental rights to consider the terms of a postadoption contact agreement in evaluating the best interests of the child.

11 **SECTION 3.** 48.43 (2) (c) of the statutes is created to read:

12 48.43 (2) (c) A court may approve a postadoption contact agreement entered into under
13 s. 48.905.

NOTE: This SECTION specifies that although an order terminating parental rights severs the legal relationship between the parent and child, a court may approve a postadoption contact agreement.

14 **SECTION 4.** 48.905 of the statutes is created to read:

1 **48.905 Postadoption contact agreement. (1) PARTIES.** A proposed adoptive parent
2 may, if the proposed adoptive parent so chooses, enter into a postadoption contact agreement
3 with a parent of the child who is the subject of the adoption or with another relative with whom
4 the child has a substantial relationship.

5 **(2) TERMS.** A postadoption contact agreement shall contain all of the following
6 provisions:

7 (a) An acknowledgment by the parent or relative that failure to comply with the terms
8 of the agreement is not grounds to revoke the termination of the parent's rights or the adoption.
9 An acknowledgment under this paragraph is not required if s. 48.028 and the federal Indian
10 Child Welfare Act, 25 USC 1901 to 1963, apply to the proceeding.

11 (b) A statement by each party to the agreement that the agreement was entered into
12 voluntarily, that the terms of the agreement are understood, that no promises or threats were
13 made to coerce a party to enter into the agreement, and that no representations have been relied
14 upon other than those contained in the agreement.

15 (c) An acknowledgment that if a dispute arises about fulfillment of the terms of the
16 agreement, the parties shall participate, or attempt to participate, in good faith, in mediation
17 or an alternative dispute resolution process, with the mediator or arbitrator to be selected by
18 the adoptive parent.

19 (d) A description of the postadoption contact and frequency of contact agreed to by the
20 proposed adoptive parent. Contact may include any of the following:

21 1. Sharing of information about the child between the adoptive parent and parent or
22 relative.

23 2. Sharing of the parent's or relative's medical history.

24 3. Written, oral, or electronic communication between the child and parent or relative.

1 4. Visitation by the parent or relative with the child under specified conditions or
2 conditions that may be set by the proposed adoptive parent at the time of visitation.

3 **(3) APPROVAL.** In a proceeding to terminate parental rights or a proceeding to grant an
4 adoption, a court may approve a postadoption contact agreement if it finds all of the following:

5 (a) The agreement contains all of the provisions specified in sub. (2), and the court is
6 satisfied that the proposed adoptive parent and the parent or relative understand those
7 provisions.

8 (b) The agreement is signed by the proposed adoptive parent and parent or relative with
9 whom the child has a substantial relationship.

10 (c) An agency having guardianship, legal custody, or supervision of the child, the child's
11 guardian ad litem, and, in the case of an Indian child, the Indian child's tribe, have submitted
12 favorable recommendations for approval of the postadoption contact agreement.

13 (d) The court determines that the parent or relative will not undermine the proposed
14 adoptive parent's relationship with the child.

15 (e) The court determines that the parent or relative will not act in a manner that is
16 contrary to the proposed adoptive parent's parenting decisions that are related to the child's
17 physical, emotional, educational, or spiritual welfare.

18 (f) The court determines by clear and convincing evidence that approval of the
19 agreement is in the best interests of the child. In considering the best interests of the child
20 under this section, the court shall consider all of the following:

21 1. Whether the child has a substantial relationship with the parent or relative, and
22 whether it would be harmful to the child not to preserve that relationship.

23 2. The needs of the child and how those needs would be affected by postadoption contact
24 with the parent or relative as provided under the agreement.

1 3. The wishes of the child, which may be communicated by the child, or through the
2 child's guardian ad litem or other appropriate professional.

3 4. Any other factor that the court determines is relevant to the best interests of the child.

4 **(4) STIPULATED MODIFICATION.** At any time after approval of an agreement by a court,
5 an adoptive parent may, if the adoptive parent so chooses, agree to modify the postadoption
6 contact agreement with the former parent or relative. The modified agreement shall be in
7 writing, signed by the parties, and shall be submitted to the court. The court may approve the
8 modified agreement, without a hearing, if it finds by clear and convincing evidence that
9 modification of the agreement is in the best interests of the child.

10 **(5) PETITION TO MODIFY OR TERMINATE.** At any time after approval of an agreement by
11 a court, an adoptive parent may petition the court for modification or termination of the
12 postadoption contact agreement. The court shall schedule a hearing on the petition, with
13 notice to the adoptive parent, former parent or relative, an agency that had guardianship, legal
14 custody, or supervision of the child before the adoption, and, in the case of an Indian child,
15 the Indian child's tribe. The court may modify or terminate the agreement, after a hearing, if
16 it finds by clear and convincing evidence that modification or termination of the agreement
17 is in the best interests of the child and that there has been a substantial change in circumstances
18 since the agreement was approved by the court.

19 **(6) ENFORCEMENT.** A party may petition the court for enforcement of the terms of the
20 agreement after attempting mediation or an alternative dispute resolution process in good faith
21 to obtain specific performance of the terms of the agreement. The court shall schedule a
22 hearing on the petition, with notice to the adoptive parent, former parent or relative, an agency
23 that had guardianship, legal custody, or supervision of the child before the adoption, and, in
24 the case of an Indian child, the Indian child's tribe. The court may order specific performance

1 of the terms of the agreement, after a hearing, if it finds by clear and convincing evidence that
2 enforcement is in the best interests of the child. In first attempting mediation or an alternative
3 dispute resolution process, the mediator or arbitrator shall be selected by the adoptive parent,
4 with the mediator or arbitrator's fees to be paid equally by the adoptive parent and former
5 parent or relative unless agreed otherwise in the mediation or ordered otherwise by the
6 arbitrator or the court.

NOTE: This SECTION allows a proposed adoptive parent and former parent or relative with whom the child has a substantial relationship to enter into an agreement for postadoption contact privileges. The provision governs what must be included in the agreement, the conditions for a court's approval of the agreement, the conditions under which the parties may agree to modify the agreement, and the conditions under which the court may modify, terminate, or enforce the agreement.

7 **SECTION 5.** 48.92 (2) of the statutes is amended to read:

8 48.92 (2) After the order of adoption is entered the relationship of parent and child
9 between the adopted person and the adopted person's birth parents and the relationship
10 between the adopted person and all persons whose relationship to the adopted person is
11 derived through those birth parents shall be completely altered and all the rights, duties, and
12 other legal consequences of those relationships shall cease to exist, unless the birth parent is
13 the spouse of the adoptive parent, in which case those relationships shall be completely altered
14 and those rights, duties, and other legal consequences shall cease to exist only with respect to
15 the birth parent who is not the spouse of the adoptive parent and all persons whose relationship
16 to the adopted person is derived through that birth parent. Notwithstanding the extinction of
17 all parental rights under this subsection, a court may approve a postadoption contact
18 agreement under s. 48.905 or order reasonable visitation under s. 48.925.

NOTE: This SECTION specifies that although an order for an adoption severs the legal relationship between the parent and child, a court may approve a postadoption contact agreement.

1

(END)