

1981 Assembly Bill 246

Date published: May 6, 1982

CHAPTER 359 , Laws of 1981

AN ACT to amend 48.025 (2), 48.425 (2), 48.78, 48.93 (1) and 69.33 (5) and (6); and to create 20.435 (2) (j), 48.422 (9), 48.425 (1) (am) and (1m), 48.427 (6), 48.432, 48.433 and 767.47 (2m) of the statutes, relating to disclosure of information about birth parents whose rights have been terminated or who have consented to the adoption of a child, making an appropriation and granting rule-making authority.

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

SECTION 1. 20.005 (2) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	1981-82	1982-83
20.435 Health and social services, department of		
(2) COMMUNITY SERVICES		
(j) Searches for birth parents	PR A 13,600	27,200

SECTION 2. 20.435 (2) (j) of the statutes is created to read:

20.435 (2) (j) *Searches for birth parents.* The amounts in the schedule for paying the cost of searches for birth parents under ss. 48.432 (4) and 48.433 (6). All moneys received as fees paid by persons requesting a search under s. 48.432 (4) or 48.433 (6) shall be credited to this appropriation.

SECTION 3. 48.025 (2) of the statutes is amended to read:

48.025 (2) The declaration provided in sub. (1) may be filed at any time except after a termination of the natural father's rights under subch. VIII. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

SECTION 4. 48.422 (9) of the statutes is created to read:

48.422 (9) (a) If a petition for termination of the rights of a birth parent, as defined under s. 48.432 (1) (a), is filed by a person other than an agency enumerated under s. 48.069 (1) or (2) or if the court waives the report required under s. 48.425, the court

shall order any parent whose rights may be terminated to file with the court the information specified under s. 48.425 (1) (am).

(b) If a birth parent does not comply with par. (a), the court shall order any health care provider as defined under s. 146.81 (1) known to have provided care to the birth parent or parents to provide the court with any health care records of the birth parent or parents that are relevant to the child's medical condition or genetic history. A court order for the release of alcohol or drug abuse treatment records subject to 21 USC 1175 or 42 USC 4582 shall comply with 42 CFR 2.

SECTION 5. 48.425 (1) (am) and (1m) of the statutes are created to read:

48.425 (1) (am) A medical record of the child which shall include:

1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.
2. A report of any medical examination which either birth parent had within one year before the date of the petition.
3. A report describing the child's prenatal care and medical condition at birth.
4. The medical and genetic history of the child and any other relevant medical and genetic information.

(1m) The department shall prepare the medical record within 60 days after the date of the petition for the termination of parental rights.

SECTION 6. 48.425 (2) of the statutes is amended to read:

48.425 (2) The court may waive the report required under this section if consent is given under s. 48.41, but shall order the birth parent or parents to provide the department with the information specified under sub. (1) (am).

SECTION 7. 48.427 (6) of the statutes is created to read:

48.427 (6) If an order is entered under sub. (3) or (4), the court shall:

(a) Inform each birth parent, as defined under s. 48.432 (1) (a), whose rights have been terminated of the provisions of ss. 48.432 and 48.433.

(b) Forward to the department:

1. The name and date of birth of the child whose birth parent's rights have been terminated.
2. The names and current addresses of the child's birth parents, guardian and legal custodian.
3. The medical and genetic information obtained under s. 48.422 (9) or 48.425 (1) (am) or (2).

SECTION 8. 48.432 of the statutes is created to read:

48.432 Access to medical information. (1) In this section:

(a) "Birth parent" means either:

1. The mother designated on the child's original birth certificate.
2. One of the following:
 - a. The adjudicated father.
 - b. If there is no adjudicated father, the husband of the mother at the time of the child's conception, birth or subsequent legitimation.

(b) "Child" means a person whose birth parent's rights have been terminated in this state at any time, or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(2) (a) The department shall maintain all information obtained under s. 48.427 (6) (b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department any relevant medical or genetic information about the child or the child's birth parents, and the department shall maintain the information in the centralized birth record file.

(3) (a) The department shall release the medical information under sub. (2) to any of the following persons upon request:

1. A child 18 years of age or older.
2. An adoptive parent of an adopted child.
3. The guardian or legal custodian of a child.
4. The offspring of a child if the requester is 18 years of age or older.
5. An agency or social worker assigned to provide services to the child or place the child for adoption.

(b) Before releasing the information under par. (a), the department shall delete the name and address of the birth parent and the identity of any provider of health care to the child or to the birth parent.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about a child whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such a child, the person may request that the department conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the child has or may have acquired a genetically transferable disease or that the child's medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department shall undertake a diligent search for the child's parents. Upon request by the department, a county agency under s. 48.56 (1) or agency licensed under s. 48.60 shall cooperate in the search and shall make its records available to the department. The department may not require an agency to conduct the search, but may designate an agency to do so with the agency's consent.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department or agency designated by the department under par. (b) shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent's identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department shall notify the requester, without disclosing the birth parent's identity or location, and the requester may petition the circuit court to order the birth parent to disclose the information. The court shall grant the motion for good cause shown.

(7) (a) If the department or another agency that maintains records relating to the adoption of a child or the termination of parental rights receives a report from a physician stating that a birth parent or another child of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the child of the existence of the disease, if he or she is 18 years of age or over, or notify the child's guardian, custodian or adoptive parent if the child is under age 18.

(b) If the department or agency receives a report from a physician that a child has acquired or may have a genetically transferable disease, the department or agency shall notify the child's birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) The department shall adopt rules to implement this section.

SECTION 9. 48.433 of the statutes is created to read:

48.433 Access to identifying information about parents. (1) In this section, "birth parent" has the meaning given under s. 48.432 (1) (a).

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department an affidavit authorizing the department to provide the child with his or her original birth certificate and with any other available information about the birth parent's identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department in writing.

(3) Any person 21 years of age or over whose birth parent's rights have been terminated in this state or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982, may request the department to provide the person with the following:

(a) The person's original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department shall require the requester to provide adequate identification.

(5) If, the department shall disclose the requested information in either of the following circumstances:

(a) The department has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6) (a) If the department does not have on file an affidavit from each known birth parent, it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request. If any information has been provided under sub. (5), the department is not required to conduct a search.

(b) Upon request by the department, a county department under s. 48.56 (1) or an agency licensed under s. 48.60 shall cooperate in the search and shall make its records available to the department. The department may not require an agency to conduct the search, but may designate an agency to do so with the agency's consent.

(c) Employes of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department or agency designated by the department under par. (b) shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7) (a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.
2. The date of the request.
3. The fact that the birth parent has the right to file with the department the affidavit under sub. (2).

(b) Within 3 working days after contacting a birth parent, the department shall send the birth parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8) (a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department shall so inform the requester. The department may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information it has on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).
2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department.

(9) The requester may petition the circuit court to order the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall adopt rules to implement this section.

SECTION 10. 48.78 of the statutes is amended to read:

48.78 Confidentiality of records. Records kept or information received by the department, county agencies specified in s. 48.56, licensed child welfare agencies, licensed day care centers and licensed maternity hospitals regarding individuals in their care or legal custody shall not be open to inspection or their contents disclosed except as provided under ss. 48.432 and 48.433 or by order of the court. This section does not apply to the confidential exchange of information between these agencies or other social welfare or law enforcement agencies regarding individuals in the care or legal custody of one of the agencies. This section does not prohibit the department or a county department of public welfare or social services from using in the media a picture or description of a child in the guardianship of the department or a county department of public welfare or social services for the purpose of finding adoptive parents for that child.

SECTION 11. 48.93 (1) of the statutes is amended to read:

48.93 (1) ~~Except as provided in ss. 46.03 (29) and 48.57 (1) (j), all~~ All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file. ~~No person shall have access to such records except on and may not be disclosed except under s. 46.03 (29), 48.432, 48.433 or 48.57 (1) (j), or by order of the court for good cause shown. No person in charge of adoption records shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by the court.~~

SECTION 12. 69.33 (5) and (6) of the statutes are amended to read:

69.33 (5) ~~The state registrar shall file the new certificate shall then be filed~~ in place of the original, and the original, together with all correspondence, affidavits, court orders, and other material pertaining thereto, shall be filed away from all public access. ~~Copies of or access to these originals or any material pertaining thereto shall be obtained~~ The records may be disclosed only on court order or at the discretion of, when authorized by the state registrar under s. 69.23 (4) or by the department of health and social services under s. 48.432 or 48.433. Copies of the new certificate shall be issued under the ~~same~~ laws and rules as that apply to the issuing of other certificates.

(6) The state registrar shall send a copy of each new certificate to the register of deeds or city health officer where a copy of the original was filed. ~~Such~~ The register of deeds or city health officer ~~and state registrar~~ shall file the new ~~record~~ certificate in ~~their~~ his or her regular file, and impound the original ~~which shall not.~~ The original certificate may be examined except only upon court order or request of, when authorized by the state registrar or by the department of health and social services under s. 48.432 or 48.433.

SECTION 13. 767.47 (2m) of the statutes is created to read:

767.47 (2m) Medical and genetic information filed with the department of health and social services or the court under s. 48.425 (1) (am) or (2) is not admissible to prove the paternity of the child.

SECTION 14. **Nonstatutory provisions; notice of provisions of act.** The department of health and social services shall, no later than 3 months after the effective date of this act, publish in the official state newspaper as defined in section 985.04 (1) of the statutes a notice informing birth parents whose parental rights have been terminated or who have consented to the adoption of a child prior to February 1, 1982, of their right to file with that department medical and genetic information concerning the child or the birth parent under section 48.432 of the statutes, as created by this act, and of their right to file with

that department an affidavit consenting to the disclosure of their identity and location under section 48.433 of the statutes, as created by this act.

SECTION 15. Position authorization. The authorized FTE positions for the department of health and social services are increased by 1.5 PRO positions on the effective date of this act, to be funded from the appropriation under section 20.435 (2) (j) of the statutes, for the purpose of carrying out the responsibilities assigned to the department under this act.

SECTION 16. Terminology changes. Wherever the term “natural” appears in the following sections of the statutes, the term “birth” is substituted: 48.428 (4) and (6), 48.82 (3), 48.92 (2), 48.94 and 48.96.

SECTION 17. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A Statute Sections	B Old Cross-References	C New Cross-References
767.47 (1)(f)	subs. (2) and (3)	subs. (2), (2m) and (3)

SECTION 18. Initial applicability. The treatment of sections 48.422 (9) and 48.425 (1) (am), (1m) and (2) and 48.427 (6) (b) of the statutes by this act applies in proceedings for the termination of parental rights proceedings commenced on or after the effective date of this act.
