

1 **AN ACT** *to repeal* 48.428 (6) (b); *to renumber and amend* 48.428 (6) (a); *to amend*
 2 48.23 (2), 48.235 (1) (c), 48.43 (2) and 48.92 (2); and *to create* 48.429 of the
 3 statutes; **relating to:** posttermination of parental rights contact between a child and
 4 the child’s birth parents, birth siblings, and other birth relatives.

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 adoption and termination of parental rights law.

Under current law, a termination of parental rights (TPR) order permanently severs all legal rights and duties between a birth parent and the child. Current law does, however, permit the court assigned to exercise jurisdiction under the Children’s Code (juvenile court) to order visitation by a birth parent of a child placed in sustaining care following a TPR. Current law also permits the juvenile court, in the case of a child who is adopted by a stepparent or relative, to grant reasonable visitation rights to a relative of the child who has maintained a relationship similar to a parent–child relationship with the child if the juvenile court determines that the visitation is in the best interests of the child and that the relative will not undermine the adoptive parents’ relationship with the child.

This bill draft permits the juvenile court, at the time a TPR order is entered, to grant posttermination of parental rights contact (posttermination contact) privileges to a birth parent, birth sibling, or other birth relative of the child. Those privileges may include visitation, the exchange of information, or any other contact or communication between the child, the child’s adoptive parent, or any other physical custodian of the child and a birth parent, birth sibling, or other birth relative of the child.

5 **SECTION 1.** 48.23 (2) of the statutes is amended to read:

6 48.23 (2) RIGHT OF PARENTS TO COUNSEL. ~~Whenever~~ If a child is the subject of a
 7 proceeding involving a contested adoption or ~~the an~~ involuntary termination of parental rights,

1 any parent under 18 years of age who appears before the court shall be represented by counsel;
2 but no such parent may waive counsel. A minor parent petitioning for ~~the~~ a voluntary
3 termination of parental rights shall be represented by a guardian ad litem. If a proceeding
4 involves a contested adoption or ~~the~~ an involuntary termination of parental rights, any parent
5 18 years old or older who appears before the court shall be represented by counsel; but the
6 parent may waive counsel ~~provided~~ if the court is satisfied ~~such~~ that the waiver is knowingly
7 and voluntarily made. If a child is the subject of a proposed posttermination contact agreement
8 under s. 48.429, the child's parent shall be represented by counsel; except that a minor parent
9 who petitioned for a voluntary termination of parental rights may be represented by a guardian
10 ad litem instead of counsel and an adult parent may waive counsel if the court is satisfied that
11 the waiver is knowingly and voluntarily made.

NOTE: SECTION 1 provides that if a child is the subject of a proposed posttermination contact agreement, the child's parent must be represented by counsel. However, a minor parent who petitioned for voluntary TPR may be represented by a guardian ad litem (GAL) instead of counsel and an adult parent may waive counsel.

12 **SECTION 2.** 48.235 (1) (c) of the statutes is amended to read:

13 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is the subject
14 of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who
15 is the subject of a contested adoption proceeding ~~and~~ and for a child who is the subject of a
16 proceeding under s. 48.977 or 48.978, for a child who is the subject of a proposed
17 posttermination contact agreement under s. 48.429, and for a child for whom posttermination
18 contact with a sibling is proposed under s. 48.429.

NOTE: SECTION 2 requires the court to appoint a GAL for a child who is the subject of a proposed posttermination contact agreement and for a child for whom posttermination contact with a sibling is proposed.

19 **SECTION 3.** 48.428 (6) (a) of the statutes is renumbered 48.428 (6) and amended to read:

1 48.428 (6) ~~Except as provided in par. (b), the~~ The court may order or prohibit visitation
2 ~~by grant posttermination contact privileges under s. 48.429 to a birth parent, birth sibling, or~~
3 ~~other birth relative~~ of a child placed in sustaining care.

4 **SECTION 4.** 48.428 (6) (b) of the statutes is repealed.

NOTE: SECTIONS 3 and 4 provide that the court may grant
posttermination contact privileges to a birth parent, birth sibling, or other
birth relative for a child who is placed in sustaining care following a
TPR.

5 **SECTION 5.** 48.429 of the statutes is created to read:

6 **48.429 Posttermination contact privileges. (1) PERSONS PERMITTED POSTTERMINATION**
7 CONTACT PRIVILEGES. (a) At the time a termination of parental rights order is entered, the court,
8 except as provided in par. (b), may grant posttermination contact privileges under sub. (2) to
9 a birth parent, birth sibling, or other birth relative of the child. The posttermination contact
10 privileges that a court may grant include visitation, the exchange of information, or any other
11 contact or communication between the child, the child's adoptive parent, or any other physical
12 custodian of the child and a birth parent, birth sibling, or other birth relative of the child.

13 (b) 1. Except as provided in subd. 2., the court may not grant posttermination contact
14 privileges under sub. (2) to a birth parent, birth sibling, or other birth relative of a child if the
15 birth parent, birth sibling, or other birth relative has been convicted under s. 940.01 of the
16 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide,
17 of a birth parent of the child, and the conviction has not been reversed, set aside, or vacated.

18 1m. Except as provided in subd. 2., if a birth parent, birth sibling, or other birth relative
19 who is granted posttermination contact privileges under sub. (2) is convicted under s. 940.01
20 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
21 homicide, of a birth parent of the child, and the conviction has not been reversed, set aside,

1 or vacated, the court shall issue an order prohibiting the birth parent, birth sibling, or other
2 birth relative from having posttermination contact with the child on petition of the child, a
3 person whose consent to the granting of posttermination contact privileges is required under
4 sub. (2) (a), or the district attorney or corporation counsel of the county in which the
5 dispositional order was entered, or on the court's own motion, and on notice to the birth parent,
6 birth sibling, or other birth relative.

7 2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing
8 evidence that the posttermination contact would be in the best interests of the child. The court
9 shall consider the wishes of the child in making that determination.

10 **(2) PREREQUISITES TO GRANTING POSTTERMINATION CONTACT PRIVILEGES.** A court may
11 grant posttermination contact privileges if all of the following prerequisites are met:

12 (a) Each proposed adoptive parent or, if at the time the termination of parental rights
13 order is entered no proposed adoptive parent has been identified, the child's guardian
14 appointed under s. 48.427 (3m) or 48.428 (2) consents to the granting of posttermination
15 contact privileges.

16 (b) All persons whose consent is required under par. (a) and all birth parents, birth
17 siblings, by their guardians ad litem, and other birth relatives who are intended to have
18 posttermination contact with the child sign and file with the court a posttermination contact
19 agreement, and the court, after considering the terms of the agreement, approves the
20 agreement.

21 (c) The court addresses all parties to the agreement under par. (b) and determines that
22 the agreement was entered into voluntarily and with understanding of the terms of the
23 agreement and that no promises or threats were made to coerce any person into entering into
24 the agreement.

1 (d) The court considers the wishes of the child in determining whether to grant
2 posttermination contact privileges.

3 (e) All of the following persons submit to the court recommendations concerning the
4 granting of posttermination contact privileges, and the court considers those
5 recommendations in determining whether to grant those privileges:

6 1. The child's guardian ad litem.

7 2. The agency under s. 48.427 (3m) (a) 1. to 4. that has been appointed guardian of the
8 child or, if no agency has guardianship of the child, the person required to conduct an
9 investigation or screening under s. 48.88 (2) (a) or (c).

10 (f) The court, after considering the terms of the agreement under par. (b), the wishes of
11 the child under par. (d), and the recommendations made under par. (e) and after determining
12 under par. (c) that the agreement was entered into voluntarily, with understanding of the terms
13 of the agreement, and without coercion, determines that granting posttermination contact
14 privileges would be in the best interests of the child.

15 **(3) PROVISIONS OF POSTTERMINATION CONTACT AGREEMENT.** (a) A posttermination
16 contact agreement filed under sub. (2) (b) shall contain all of the following provisions:

17 1. An acknowledgement by all birth parents, birth siblings, and other birth relatives who
18 are permitted posttermination contact with the child under the agreement that the termination
19 of parental rights is irrevocable, even if the adoptive parents or any other physical custodians
20 of the child do not comply with the agreement.

21 2. An acknowledgement by all persons whose consent to the granting of
22 posttermination contact privileges is required under sub. (2) (a) that the agreement is
23 enforceable by any person who is permitted posttermination contact with the child under the
24 agreement.

1 3. A statement by all parties to the agreement that the agreement was entered into
2 voluntarily and with understanding of the terms of the agreement and that no promises or
3 threats were made to coerce any person into entering into the agreement.

4 (b) A posttermination contact agreement filed under sub. (2) (b) may not provide, or
5 be construed to provide, for a birth parent to share with the adoptive parents any of the rights,
6 duties, or other legal consequences of the relationship of parent and child between the adoptive
7 parents and the adopted child or in any manner limit, or be construed to limit, any right, duty,
8 or other legal consequence of the relationship of parent and child between the adoptive parents
9 and the adopted child.

10 **(4) LATER-IDENTIFIED PROPOSED ADOPTIVE PARENTS.** If a child who is the subject of a
11 posttermination contact agreement is placed for adoption in the home of a proposed adoptive
12 parent who was not identified at the time of the termination of parental rights, the court shall
13 review that agreement at the time of the adoption and may order posttermination contact
14 privileges to continue after the adoption if all of the following prerequisites are met:

15 (a) Each proposed adoptive parent consents to the granting of posttermination contact
16 privileges.

17 (b) Each proposed adoptive parent signs and files with the court an addendum to the
18 posttermination contact agreement under sub. (2) (b) indicating that the proposed adoptive
19 parent agrees to be bound by that agreement.

20 (c) The court addresses each proposed adoptive parent and determines that the
21 addendum was entered into voluntarily and with understanding of the terms of the agreement
22 and that no promises or threats were made to coerce the proposed adoptive parent into agreeing
23 to be bound by the agreement.

1 (d) The court considers the wishes of the child in determining whether to continue
2 posttermination contact privileges.

3 (e) The child's guardian ad litem and the person specified in sub. (2) (e) 2. submit
4 recommendations to the court concerning the continuation of posttermination contact
5 privileges, and the court considers those recommendations in determining whether to continue
6 those privileges.

7 (f) The court, after reviewing the agreement, considering the wishes of the child under
8 par. (d) and the recommendations made under par. (e), and determining under par. (c) that the
9 addendum to the agreement was entered into voluntarily, with understanding of the terms of
10 the agreement, and without coercion, determines that continuing posttermination contact
11 privileges would be in the best interests of the child.

12 (5) ENFORCEMENT OF POSTTERMINATION CONTACT AGREEMENT. (a) Any party to a
13 posttermination contact agreement may petition the court that approved the agreement to
14 compel any person who is bound by the agreement to comply with the agreement. The petition
15 shall allege facts sufficient to show that a person who is bound by the agreement is not in
16 compliance with the agreement and that the petitioner, before filing the petition, attempted in
17 good faith to resolve the dispute giving rise to the filing of the petition. The petition may also
18 allege facts showing that the noncompliance with the agreement is not in the best interests of
19 the child.

20 (b) 1. On receipt of a petition under par. (a), the court shall set a date and time for a
21 hearing on the petition and shall provide notice of the hearing to all parties to the agreement;
22 the child by the child's guardian ad litem; and all persons specified in sub. (2) (e) 2. who are
23 not parties to the agreement.

1 2. The court shall give a person specified in sub. (2) (e) 2. who is not a party to the
2 agreement an opportunity to be heard at the hearing noticed under subd. 1. by permitting that
3 person to make a written or oral statement during the hearing, or to submit a written statement
4 before the hearing, relevant to the issues to be determined at the hearing. A person specified
5 in sub. (2) (e) 2. who is not a party to the agreement does not become a party to a proceeding
6 to enforce the agreement solely on the basis of receiving notice under subd. 1. and an
7 opportunity to be heard under this subdivision.

8 (c) If the court finds, after hearing, that any person bound by the agreement is not in
9 compliance with the agreement and that the petitioner, before filing the petition, attempted in
10 good faith to resolve the dispute giving rise to the filing of the petition, the court shall issue
11 an order requiring the person to comply with the agreement. In addition, if the court finds,
12 after hearing, that the noncompliance with the agreement is not in the best interests of the child,
13 the court may find the person who is not in compliance with the agreement to be in contempt
14 of court under ch. 785, except that the court may impose only the remedial sanctions specified
15 in s. 785.04 (1) (a), (c), and (e) against the person.

16 (d) A court may not revoke a termination of parental rights order or an order of adoption
17 because an adoptive parent or other physical custodian of the child or a birth parent, birth
18 sibling, or other birth relative of the child fails to comply with a posttermination contact
19 agreement approved by the court under sub. (2) (b).

20 **(6) MODIFICATION OF POSTTERMINATION CONTACT AGREEMENT.** (a) 1. Any party to a
21 posttermination contract agreement approved by the court under sub. (2) (b) may petition the
22 court that approved the agreement to modify the agreement. The petition shall allege facts
23 sufficient to show that there has been a substantial change in circumstances since the entry of
24 the last order affecting posttermination contact with the child, that a modification of the

1 agreement would be in the best interests of the child, and that the petitioner, before filing the
2 petition, attempted in good faith to resolve the issue giving rise to the filing of the petition.

3 2. On receipt of a petition under subd. 1., the court shall set a date and time for a hearing
4 on the petition and shall provide notice of the hearing to all persons specified in sub. (5) (b)

5 1. The court shall give a person specified in sub. (2) (e) 2. who is not a party to the agreement
6 an opportunity to be heard in the manner specified in sub. (5) (b) 2. A person specified in sub.
7 (2) (e) 2. who is not a party to the agreement does not become a party to a proceeding to modify
8 the agreement solely on the basis of receiving notice and an opportunity to be heard under this
9 subdivision.

10 3. If the court finds, after hearing, that there has been a substantial change in
11 circumstances since the entry of the last order affecting posttermination contact with the child,
12 that a modification of the agreement would be in the best interests of the child, and that the
13 petitioner, before filing the petition, attempted in good faith to resolve the issue giving rise to
14 the filing of the petition, the court may modify the agreement.

15 (b) 1. The parties to a posttermination contact agreement approved by the court under
16 sub. (2) (b) may agree to a modification of the agreement. If the parties agree to a modification
17 of the agreement, the parties shall file a stipulation with the court that specifies the agreed on
18 modifications. On receipt of the stipulation, the court shall provide copies of the stipulation
19 to the child's guardian ad litem and to all persons specified in sub. (2) (e) 2. who are not parties
20 to the agreement. If no objection is received by the court within 10 days after the date on which
21 the court provides those copies and if, after reviewing the stipulation, the court finds that the
22 modification would be in the best interests of the child, the court shall incorporate the terms
23 of the stipulation into a modified order granting posttermination contact privileges.

1 2. If a person who is provided with a copy of the stipulation under subd. 1. objects to
2 the modification or if the court, after reviewing the stipulation, determines that a hearing is
3 necessary to determine whether the modification would be in the best interests of the child,
4 the court shall set a date for a hearing on the stipulation, provide notice of the hearing to all
5 persons specified in sub. (5) (b) 1., and give a person specified in sub. (2) (e) 2. who is not a
6 party to the agreement an opportunity to be heard in the manner specified in sub. (5) (b) 2.
7 A person specified in sub. (2) (e) 2. who is not a party to the agreement does not become a party
8 to a proceeding to modify the agreement solely on the basis of receiving notice and an
9 opportunity to be heard under this subdivision. If the court finds, after hearing, that the
10 modification would be in the best interests of the child, the court shall incorporate the terms
11 of the stipulation into a modified order granting posttermination contact privileges.

NOTE: SECTION 5 permits the juvenile court, at the time a TPR order is entered, to grant posttermination contact privileges to a birth parent, birth sibling, or other birth relative of the child. Those privileges may include visitation, the exchange of information, or any other contact or communication between the child, the child's adoptive parent, or any other physical custodian of the child and a birth parent, birth sibling, or other birth relative of the child. The juvenile court may grant posttermination contact privileges if all of the following conditions are met:

1. Each proposed adoptive parent or, if at the time of the TPR order no proposed adoptive parent has been identified, the child's guardian consents to the granting of posttermination contact privileges.

2. All persons whose consent to the granting of posttermination contact privileges is required and all birth parents, birth siblings, and other birth relatives who are intended to have posttermination contact with the child sign and file with the juvenile court a posttermination contact agreement, and the juvenile court approves the agreement.

3. The juvenile court addresses all parties to the agreement and determines that the agreement was entered into voluntarily and with understanding of the terms of the agreement and that no promises or threats were made to coerce any person into entering into the agreement.

4. The juvenile court considers the wishes of the child in determining whether to grant those privileges.

5. The child's guardian ad litem and the Department of Health and Family Services, county department of human services or social services, or licensed child welfare agency (collectively, "agency") that has guardianship of the child or, if no agency has guardianship of the child, the agency that is required to conduct the preadoptive investigation of the adoptive parents' home submit to the juvenile court recommendations concerning the granting of posttermination contact privileges, and the juvenile court considers those recommendations in determining whether to grant those privileges.

6. The juvenile court determines that granting posttermination contact privileges would be in the best interests of the child.

A posttermination contact agreement must contain an acknowledgement by all birth parents, birth siblings, and other birth relatives who are permitted posttermination contact with the child under the agreement that the TPR is irrevocable, even if the adoptive parents or any other physical custodian of the child do not comply with the agreement; an acknowledgement by all persons whose consent to the granting of posttermination contact privileges is required that the agreement is enforceable by any person who is permitted posttermination contact with the child under the agreement; and a statement that the agreement was entered into voluntarily and with understanding of the terms of the agreement and that no promises or threats were made to coerce any person into entering into the agreement. A posttermination contact agreement may not provide, or be construed to provide, for a birth parent to share with the adoptive parents any of the rights, duties, or other legal consequences of the relationship of parent and child between the adoptive parents and the adopted child or in any manner limit, or be construed to limit, any right, duty, or other legal consequence of the relationship of parent and child between the adoptive parents and the adopted child.

Under the bill draft, if a child who is the subject of a posttermination contact agreement is placed for adoption in the home of a proposed adoptive parent who was not identified at the time of the TPR, the juvenile court must review the agreement at the time of the adoption and may order posttermination contact privileges to continue after the adoption if all of the following conditions are met:

1. Each proposed adoptive parent consents to the granting of posttermination contact privileges.

2. Each proposed adoptive parent signs and files with the court an addendum to the posttermination contact agreement indicating that the proposed adoptive parent agrees to be bound by that agreement.
3. The juvenile court addresses each proposed adoptive parent and determines that the addendum was entered into voluntarily and with understanding of the terms of the agreement and that no promises or threats were made to coerce the proposed adoptive parent into agreeing to be bound by the agreement.
4. The juvenile court considers the wishes of the child in determining whether to continue posttermination contact privileges.
5. The child's guardian ad litem and the agency that has guardianship of the child or, if no agency has guardianship of the child, the agency that is required to conduct the preadoptive investigation of the proposed adoptive parents' home submit recommendations to the juvenile court concerning the continuation of posttermination contact privileges, and the juvenile court considers those recommendations in determining whether to continue those privileges.
6. The juvenile court determines that continuing posttermination contact privileges would be in the best interests of the child.

A posttermination contact agreement is enforceable by the juvenile court. Before petitioning the juvenile court to compel compliance with the agreement, however, the petitioner must attempt in good faith to resolve the dispute giving rise to the filing of the petition. If the juvenile court finds that a person is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the juvenile court must issue an order requiring the person to comply with the agreement. In addition, if the juvenile court finds that the noncompliance with the agreement is not in the best interests of the child, the juvenile court may find the person who is not in compliance with the agreement to be in contempt of court, except that the juvenile court may only impose the remedial sanctions of monetary damages and a forfeiture or, if those sanctions would be ineffectual, any other sanctions, but not the remedial sanction of imprisonment, against the person.

A posttermination contact agreement may also be modified by the juvenile court if a party shows that there has been a substantial change in circumstances and that the modification would be in the best interests of the child or if the parties agree to a modification and the juvenile court finds that the modification would be in the best interests of the child. Before petitioning the juvenile court to modify the agreement based on a

