

AS:tlu

02/08/2005

1 **AN ACT** *to renumber* 48.025 (3) and 48.43 (6); *to renumber and amend* 48.025 (2)
2 and 48.42 (2m); *to amend* 46.03 (7) (bm), 48.025 (1), 48.27 (3) (b) 1. a., 48.27 (5),
3 48.42 (2) (b) (intro.), 48.42 (2) (b) 1., 48.422 (6) (a), 48.423, 48.837 (4) (e), 48.91
4 (2), 938.27 (3) (b) 1. a. and 938.27 (5); and *to create* 48.025 (2) (b), 48.025 (2) (d),
5 48.025 (3) (a), 48.025 (3) (c), 48.025 (3) (d), 48.025 (5), 48.025 (6), 48.42 (1g),
6 48.42 (2) (am), 48.42 (2m) (b) and 48.43 (6) (b) of the statutes; **relating to:**
7 declarations of paternal interest.

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.

The bill draft modifies current law relating to declarations of paternal interest and notification to putative fathers of termination of parental rights (TPR) and adoption proceedings.

Under current law, any person claiming to be the father of a nonmarital child whose paternity has not been established may file with the department of health and family services (DHFS) a declaration of paternal interest in matters affecting the child. The declaration may be filed at any time before a termination of the father's parental rights and must be in writing and signed by the person filing the declaration. DHFS must send a copy of the declaration to the mother, who may file a written response to the declaration. Filing a declaration does not extend parental rights to the person filing the declaration, but it does entitle that person to notice of a child in need of protection or services (CHIPS), a juvenile in need of protection or services (JIPS), or a TPR proceeding.

The bill draft makes various changes relating to declarations of paternal interest. The bill draft generally requires a declaration to be filed before the child's birth or within 14 days after the child's birth and permits a declaration to be revoked at any time. The bill draft also requires a declaration or revocation to be verified upon oath or affirmation and, in

the case of a minor, to also be signed by the parent or guardian of the minor.

The bill draft requires DHFS to publicize information about declarations of paternal interest in a manner calculated to provide maximum notice to all persons who might claim to be the father of a nonmarital child.

The bill draft provides that a person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration that the person does not believe is true is subject to prosecution for false swearing. False swearing is a Class A misdemeanor punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

Also, a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to \$1,000 or imprisoned for up to 90 days or both.

The bill draft also creates a new provision under which the petitioner in a proceeding to terminate the parental rights of a person who may be the father of a nonmarital child who is under one year of age may file with the TPR petition an affidavit signed by the child's mother that identifies or describes the father. The petitioner is required to notify any man alleged to be the father in the affidavit that he may file a declaration of paternal interest within 30 days after the date on which the notification was mailed.

Under current law, certain persons who may be the father of a nonmarital child whose paternity has not been established must be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons include, in addition to a person who files a declaration of paternal interest, a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child, and a person who has lived in a familial relationship with the child and who may be the father of the child. A person who receives a summons and petition in a TPR proceeding has standing to appear and contest the TPR petition and, if grounds for TPR are found, may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

The bill draft creates alternative TPR notice requirements for a person who may be the father of a nonmarital child who is under one year of age at the time the TPR petition is filed whose paternity has not been established of a TPR proceeding concerning the child if an affidavit signed by the birth mother, as described above, is filed with the petition. In these cases, the bill draft requires notice to be provided to the following:

1. A person who has filed an unrevoked declaration of paternal interest, within 14 days after the birth of the child or within 30 days after the notice of his right to file a declaration is mailed, whichever is later.

2. A person who has lived in a familial relationship with the child and who may be the father of the child.

The bill draft specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill draft does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

Finally, the bill draft prohibits a mother who has completed an affidavit relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

1 **SECTION 1.** 46.03 (7) (bm) of the statutes is amended to read:

2 46.03 (7) (bm) Maintain a file containing records of artificial inseminations under s.
3 891.40 ~~and records of~~ declarations of paternal interest under s. 48.025 ~~and of statements~~
4 acknowledging paternity under s. 69.15 (3) (b). The department ~~shall~~ may release ~~these~~ those
5 records, declarations, and statements only upon an order of the court except that the
6 department may use nonidentifying information concerning artificial inseminations for the
7 purpose of compiling statistics ~~and except that records relating to~~ declarations of paternal
8 interest shall be released as provided in s. 48.025 (3) (b) and (c), and statements
9 acknowledging paternity shall be released without a court order to the department of
10 workforce development or a county child support agency under s. 59.53 (5) ~~without a court~~
11 ~~order~~ upon the request of the that department of workforce development or a or county child
12 support agency ~~under s. 59.53 (5)~~ pursuant to the program responsibilities under s. 49.22 or
13 ~~by~~ to any other person with a direct and tangible interest in the ~~record~~ statement.

NOTE: Current law requires DHFS to release a declaration of paternal interest to the department of workforce development (DWD) or a county child support agency upon request or to any other person with a direct and tangible interest in the declaration and permits DHFS to release a declaration to any other person only upon court order.

SECTION 1 permits release of declarations upon court order and as provided in SEC. 8 of the bill draft. The bill draft does not allow declarations to be released to DWD or a county child support agency.

1 **SECTION 2.** 48.025 (1) of the statutes is amended to read:

2 48.025 (1) Any person claiming to be the father of a nonmarital child who is not adopted
3 or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not
4 been established may, in accordance with procedures under this section, file with the
5 department a declaration of his interest in matters affecting such ~~the~~ child. The department
6 may not charge a fee for filing a declaration under this section.

NOTE: SECTION 2 provides that DHFS may not charge a fee for filing a declaration of paternal interest.

7 **SECTION 3.** 48.025 (2) of the statutes is renumbered 48.025 (2) (a) and amended to read:

8 48.025 (2) (a) ~~The~~ A declaration provided in under sub. (1) may be filed at any time
9 ~~except after~~ before a termination of the father's parental rights under subch. VIII. This
10 paragraph does not apply to a declaration that is filed on or after the effective date of this
11 paragraph [revisor inserts date].

12 (c) The declaration shall be in writing, shall be signed and verified upon oath or
13 affirmation by the person filing the declaration, and shall contain the person's name and
14 address, the name and last-known address of the mother, the month and year of the birth or
15 expected birth of the child, and a statement that ~~he~~ the person filing the declaration has reason
16 to believe that he may be the father of the child. If the person filing the declaration is under
17 18 years of age, the declaration shall also be signed by a parent or guardian of the person.

NOTE: SECTION 3 requires that a declaration of paternal interest be signed and verified upon oath or affirmation. If the person filing the declaration is a minor, the declaration must also be signed by the person's parent or guardian.

18 **SECTION 4.** 48.025 (2) (b) of the statutes is created to read:

1 48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the birth of
2 the child or within 14 days after the birth of the child, except that a man who receives a notice
3 under s. 48.42 (1g) (b) may file a declaration within 30 days of the date that the notice was
4 mailed. This paragraph does not apply to a declaration filed before the effective date of this
5 paragraph [revisor inserts date].

NOTE: SECTION 4 provides that a declaration of paternal interest may be
filed at any time before the birth of the child or within 14 days after the
birth, unless the man receives a notice as provided in SECTION 14 of the
bill draft. In that case, the man may file a declaration within 30 days of
the mailing date of the notice.

6 **SECTION 5.** 48.025 (2) (d) of the statutes is created to read:

7 48.025 (2) (d) A person who has filed a declaration under sub. (1) may revoke the
8 declaration at any time by filing with the department a statement, signed and verified upon
9 oath or affirmation, that the person, to the best of his knowledge and belief, is not the father
10 of the child or that another person has been adjudicated as the father of the child. If the person
11 filing the revocation is under 18 years of age, the revocation shall also be signed by a parent
12 or guardian of the person.

NOTE: SECTION 5 permits a person who has filed a declaration of
paternal interest to revoke the declaration. If the person filing the
revocation is a minor, the revocation must also be signed by the person's
parent or guardian.

13 **SECTION 6.** 48.025 (3) of the statutes is renumbered 48.025 (3) (b).

14 **SECTION 7.** 48.025 (3) (a) of the statutes is created to read:

15 48.025 (3) (a) The department shall keep confidential and may not open to public
16 inspection or disclose the contents of any declaration, revocation of a declaration, or response
17 to a declaration filed under this section, except as provided under pars. (b) and (c) or by order
18 of the court for good cause shown.

1 **SECTION 8.** 48.025 (3) (c) of the statutes is created to read:

2 48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13 or under
3 a substantially similar law of another state or a person authorized to file a petition under s.
4 48.42, 48.837, or 938.25 or under a substantially similar law of another state may request the
5 department to search its files to determine whether a person who may be the father of the child
6 who is the subject of the proceeding has filed a declaration under this section. If the
7 department has on file a declaration of paternal interest in matters affecting the child, the
8 department shall issue to the requester a certified copy of the declaration. If the department
9 does not have on file a declaration of paternal interest in matters affecting the child, the
10 department shall issue to the requester a certified statement that no declaration could be
11 located. The department may require a person who requests a search under this paragraph to
12 pay a reasonable fee that is sufficient to defray the costs to the department of maintaining its
13 file of declarations and publicizing information relating to declarations of paternal interest
14 under this section.

15 **SECTION 9.** 48.025 (3) (d) of the statutes is created to read:

16 48.025 (3) (d) Any person who obtains any information under this subsection may use
17 or disclose that information only for the purposes of a proceeding under s. 48.13, 48.133,
18 48.14, or 938.13 or under a substantially similar law of another state and may not use or
19 disclose that information for any other purpose except by order of the court for good cause
20 shown.

NOTE: SECTIONS 7, 8, and 9 require DHFS to keep declarations of paternal interest confidential, except that DHFS must, on the request of a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) in a CHIPS, JIPS, TPR, or adoption proceeding or of a person authorized to file a CHIPS, JIPS, TPR, or adoption petition, search its files to determine whether a person who may be the father of the child who is the subject of the proceeding

or action has filed a declaration. If DHFS has a declaration on file, it must issue to the requester a certified copy of the declaration. If DHFS does not have a declaration on file, it must issue to the requester a certified statement that no declaration could be located. A TPR petitioner then must file with the juvenile court, prior to the plea hearing, the certified copy of the declaration or the certified statement that no declaration could be located.

COMMENT: Current law does not require that the court receive a certified declaration of paternal interest or a certified statement that no such declaration is on file. Is it necessary to have the copy of the declaration or the statement that there is no declaration on file certified?

1 **SECTION 10.** 48.025 (5) of the statutes is created to read:

2 48.025 (5) (a) The department shall publicize, in a manner calculated to provide
3 maximum notice to all persons who might claim to be the father of a nonmarital child, all of
4 the following information:

5 1. That a person claiming to be the father of a nonmarital child may affirmatively protect
6 his parental rights by filing a declaration of interest under this section.

7 2. The procedures for filing a declaration of interest.

8 3. The consequences of filing a declaration of interest.

9 4. The consequences of not filing a declaration of interest.

10 (b) The department may publicize the information under par. (a) by posting the
11 information on the Internet, creating a pamphlet for use by schools and health care providers,
12 and by requiring agencies which provide services under contract with the department to
13 provide the information to clients.

NOTE: SECTION 10 requires DHFS to publicize information about declarations of paternal interest. Specifically, DHFS must publicize that a person who may be the father of a child may affirmatively protect his parental rights by filing a declaration, the procedures for and consequences of filing a declaration, and the consequences of not filing a declaration.

Under the bill draft, DHFS may publicize this information on the Internet, through a brochure, and by requiring agencies that provide services under contract with DHFS to provide the information to clients.

1 **SECTION 11.** 48.025 (6) of the statutes is created to read:

2 48.025 (6) (a) Any person who makes a false statement in a declaration, revocation of
3 a declaration, or response to a declaration filed under this section that the person does not
4 believe is true is subject to prosecution for false swearing under s. 946.32 (2).

5 (b) Except as permitted under sub. (3), any person who intentionally obtains, uses, or
6 discloses information that is confidential under this section may be fined not more than \$1,000
7 or imprisoned for not more than 90 days or both.

NOTE: SECTION 11 provides that a person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration that the person does not believe is true is subject to prosecution for false swearing. False swearing is a Class A misdemeanor punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

Also, a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to \$1,000 or imprisoned for up to 90 days or both.

8 **SECTION 12.** 48.27 (3) (b) 1. a. of the statutes is amended to read:

9 48.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under s.
10 48.025.

11 **SECTION 13.** 48.27 (5) of the statutes is amended to read:

12 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify
13 and notify any person who has filed a declaration of paternal interest under s. 48.025, any
14 person who has acknowledged paternity of the child under s. 767.62 (1), and any person who
15 has been adjudged to be the ~~biological~~ father of the child in a judicial proceeding unless the
16 ~~biological father's~~ person's parental rights have been terminated.

NOTE: Under current law, the juvenile court must make every reasonable effort to identify any person who has filed a declaration and any person who has been adjudged to be the father of the child, if his parental rights have not been terminated, of a CHIPS or unborn CHIPS proceeding.

SECTIONS 12 and 13 also require the court to make every reasonable effort to identify and notify a person who has acknowledged paternity of the child.

1 **SECTION 14.** 48.42 (1g) of the statutes is created to read:

2 48.42 **(1g)** (a) If the petition is filed by a person or agency other than the district
3 attorney, corporation counsel, or other appropriate official under s. 48.09 and the petition
4 seeks to terminate the parental rights of a person who may be the father of a nonmarital child
5 who is under one year of age at the time the petition is filed, who is not adopted or whose
6 parents do not subsequently intermarry under s. 767.60, and paternity has not been established,
7 the petitioner may file with the petition an affidavit signed by the birth mother of the child if
8 the birth mother has voluntarily terminated or seeks to voluntarily terminate her parental rights
9 to the child. The affidavit shall include all of the following:

10 1. A statement that the mother has voluntarily terminated or seeks to voluntarily
11 terminate her parental rights to the child.

12 2. A statement acknowledging that the mother has been asked to identify the father of
13 the child.

14 3. A statement that the mother knows and is identifying the father or that she does not
15 know the identity of the father.

16 4. A statement identifying any man who may be the child's father has lived in a familial
17 relationship with the child.

18 5. If the mother states that she knows and is identifying the father under subd. 3. or 4.,
19 the father's name, last-known mailing address, last-known employer address, and age.

1 6. If the mother states that she does not know the identity of the father, an explanation
2 of why she is unable to identify him and a physical description of the father.

3 7. A statement that the mother has been informed and understands that if she
4 misidentifies the father, she is permanently barred from attacking the proceedings for the
5 termination of the father's or her parental rights on the basis that the father was not correctly
6 identified.

7 8. A statement that the mother understands that she may be prosecuted under s. 946.32
8 (2) for false swearing if she makes a false statement that she does not believe is true in the
9 affidavit under this paragraph.

10 9. A statement that the mother has reviewed and understands the affidavit, the name of
11 the person who explained the affidavit and the consequences of signing the affidavit to her,
12 and a statement that the mother is signing the affidavit voluntarily.

13 (b) The petitioner shall notify any man identified in the affidavit under par. (a) as an
14 alleged father of his right to file a declaration of paternal interest under s. 48.025 before the
15 birth of the child or, within 14 days after the birth of the child, or within 30 days after the date
16 the notice is mailed, whichever is later, the birthdate or anticipated birthdate of the child, and
17 of the consequences of filing and of not filing a declaration of paternal interest. The notice
18 shall be sent by certified mail to the last-known address of the alleged father.

19 (c) If an affidavit under par. (a) is not filed with the petition, notice shall be given to an
20 alleged father under sub. (2).

NOTE: SECTION 14 allows a petitioner, other than an attorney, corporation counsel, or other appropriate official, for the involuntary TPR of an alleged father of a nonmarital child who is under one year of age to file with the petition an affidavit signed by the birth mother if the mother has voluntarily or seeks to voluntarily terminate her parental rights to the child. The affidavit must include the following:

1. A statement that the mother has voluntarily terminated or seeks to voluntarily terminate her parental rights to the child.
2. A statement acknowledging that the mother has been asked to identify the father of the child.
3. A statement that she knows and is identifying the father or that she does not know the identity of the father.
4. If she states that she knows the identity of the father and is identifying the father, the father's name, last-known mailing address, last-known employer address, and age.
5. If she states that she does not know the identity of the father, an explanation of why she is unable to identify him and a physical description of the father.
6. A statement that she has been informed and understands that if she misidentifies the father, she is permanently barred from attacking the TPR proceedings on the basis that the father was not correctly identified.
7. A statement that she understands that she may be prosecuted for false swearing if she makes a false statement that she does not believe is true.
8. A statement that she has reviewed and understands the affidavit, the name of the person who explained the affidavit and the consequences of signing it, and a statement that she is signing the affidavit voluntarily.

The petitioner must notify any man who is identified in the affidavit of his right to file a declaration of paternal interest before the birth of the child, within 14 days after the birth of the child, or within 30 days after the notice is mailed, whichever is later, the birthdate or anticipated birthdate of the child, and of the consequences of filing or not filing a declaration. The notice must be sent by certified mail to the man's last-known address.

The bill draft provides that if the petitioner does not file an affidavit with the TPR petition, notice of the TPR proceeding must be given to an alleged father as provided under current law.

COMMENT: Under the bill draft, if an affidavit signed by the mother is not filed with a TPR petition, notice must be given as provided under current law. Because of this requirement, the bill draft permits, but does not require, the completion of an affidavit if the child who is the subject of the TPR petition is under one year of age. Is this change acceptable? If so, is it necessary to exempt district attorneys and corporation counsels?

1 48.42 (2) (am) If the child is a nonmarital child who is under one year of age at the time
2 the petition is filed and who is not adopted or whose parents do not subsequently intermarry
3 under s. 767.60 and paternity has not been established and an affidavit under sub. (1g) (a) filed
4 with the petition:

5 1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025
6 within 14 days after the birth of the child or within 30 days after a notice under sub. (1g) (b)
7 is mailed, whichever is later.

8 2. A person who has lived in a familial relationship with the child and who may be the
9 father of the child.

NOTE: Under current law, certain persons who may be the father of a nonmarital child whose paternity has not been established must be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons include, in addition to a person who files a declaration of paternal interest, a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child, and a person who has lived in a familial relationship with the child and who may be the father of the child. A person who receives a summons and petition in a TPR proceeding has standing to appear and contest the TPR petition and, if grounds for TPR are found, may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

SECTION 15 creates a separate notice requirement for an alleged father in a TPR proceeding concerning a nonmarital child who is under one year of age at the time the petition is filed if an affidavit or a statement that an affidavit cannot be filed, as provided under SECTION 14 of the bill draft, is filed with the TPR petition. Under this circumstance, an alleged father must receive notice if one of the following conditions is met:

1. He has filed an unrevoked declaration of paternal interest before the birth of the child, within 14 days after the birth of the child, or within 30 days after the date a notice under SEC. 14 of the bill draft was mailed.
2. He has lived in a familial relationship with the child and may be the father of the child.

10 **SECTION 16.** 48.42 (2) (b) (intro.) of the statutes is amended to read:

1 48.42 (2) (b) (intro.) If Except as provided in par. (am), if the child is a nonmarital child
2 who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and
3 paternity has not been established:

4 **SECTION 17.** 48.42 (2) (b) 1. of the statutes is amended to read:

5 48.42 (2) (b) 1. A person who has filed ~~a~~ an unrevoked declaration of paternal interest
6 under s. 48.025 before the birth of the child or within 14 days after the birth of the child.

7 **SECTION 18.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and amended to
8 read:

9 48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this subsection
10 paragraph, notice is not required to be given to a person who may be the father of a child
11 conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1)
12 or (2), or 948.025 if a physician attests to his or her belief that a sexual assault as specified in
13 this ~~subsection~~ paragraph has occurred or if the person who may be the father of the child has
14 been convicted of sexual assault as specified in this ~~subsection~~ paragraph for conduct which
15 may have led to the child's conception. A person who under this ~~subsection~~ paragraph is not
16 given notice does not have standing to appear and contest a petition for the termination of his
17 parental rights, present evidence relevant to the issue of disposition, or make alternative
18 dispositional recommendations. This ~~subsection~~ paragraph does not apply to a person who
19 may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02
20 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

21 **SECTION 19.** 48.42 (2m) (b) of the statutes is created to read:

22 48.42 (2m) (b) *Parent of nonmarital child.* A person who may be the father of a
23 nonmarital child who is not adopted or whose parents do not subsequently intermarry under
24 s. 767.60 and whose paternity has not been established, by virtue of the fact that he has engaged

1 in sexual intercourse with the mother of the child, is considered to be on notice that a
2 pregnancy and a termination of parental rights proceeding concerning the child may occur, and
3 has the duty to protect his own rights and interests. He is therefore entitled to actual notice
4 of such a proceeding only as provided in sub. (2) (am) and (b). A person who is not entitled
5 to notice under sub. (2) (am) or (b) does not have standing to appear and contest a petition for
6 the termination of his parental rights, present evidence relevant to the issue of disposition, or
7 make alternative dispositional recommendations.

NOTE: SECTION 19 provides that a person who may be the father of a nonmarital child who has under one year of age at the time the TPR petition was filed and whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding might result, has the duty to protect his own rights and interests, and, therefore, is entitled to actual notice of the TPR proceeding only as provided in the bill. In addition, the bill draft specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill draft does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

8 **SECTION 20.** 48.422 (6) (a) of the statutes is amended to read:

9 48.422 (6) (a) ~~If the child is~~ In the case of a nonmarital child who is not adopted or whose
10 parents do not subsequently intermarry under s. 767.60 and paternity has not been established,
11 the petitioner, prior to the hearing, shall file with the court a certified copy of any declaration
12 of paternal interest filed under s. 48.025 with respect to the child or a certified statement of
13 the department, dated no earlier than 15 days after the date of birth of the child or, if s. 48.42
14 (1g) (b) applies, 31 days after the date the notice under s. 48.42 (1g) (b) is mailed, that the
15 department has searched its files under s. 48.025 and no declaration with respect to the child
16 could be located. At the hearing, the court shall hear testimony concerning the paternity of
17 the child. Based on the testimony, the court shall determine whether all interested parties who

1 are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing
2 and order appropriate notice to be given.

NOTE: Under current law, if paternity has not been established at the time of a TPR fact-finding hearing regarding a nonmarital child, the court must hear testimony concerning the paternity of the child. Based on the testimony, the court must determine whether all interested parties who are known have been notified of the hearing. If not, the court must adjourn the hearing and order appropriate notice to be given.

SECTION 20 additionally requires the petitioner to file, prior to the hearing, a certified copy of any declaration filed with respect to the child or a certified statement of DHFS, dated no earlier than 15 days after the date of birth of the child, that no declaration could be located.

3 **SECTION 21.** 48.423 of the statutes is amended to read:

4 48.423 If a ~~man who alleges that he is the father of the child~~ person appears at the hearing
5 and wishes to contest the termination of his parental rights claims that he is the father of the
6 child, the court shall set a date for a hearing on the issue of paternity or, if all parties agree,
7 the court may immediately commence hearing testimony concerning the issue of paternity.
8 The court shall inform the ~~man~~ person claiming to be the father of the child of any right to
9 counsel under s. 48.23. The ~~man~~ person claiming to be the father of the child must prove
10 paternity by clear and convincing evidence. A person who establishes his paternity of the child
11 under this subsection may further participate in the termination of parental rights proceeding
12 only if the person meets a condition specified in s. 48.42 (2) (am) or (b).

NOTE: Under current law, if a man who alleges that he is the father of the child appears at the hearing and wishes to contest the termination of his parental rights, the court must set a date for a hearing on the issue of paternity or, if the parties all agree, the court may immediately commence hearing testimony concerning the issue of paternity. The man must prove paternity by clear and convincing evidence.

Under SECTION 21, the man may participate in the TPR proceeding only if he would be entitled to notice under SECS. 15 to 17.

13 **SECTION 22.** 48.43 (6) of the statutes is renumbered 48.43 (6) (a).

1 **SECTION 23.** 48.43 (6) (b) of the statutes is created to read:

2 48.43 (6) (b) The mother of a child who completes an affidavit under s. 48.42 (1g) may
3 not collaterally attack a judgment terminating parental rights on the basis that the father of the
4 child was not correctly identified.

NOTE: Under current law, a parent who has consented to a TPR or a parent who did not contest a petition for an involuntary TPR and whose rights were terminated may file a motion with the court for relief from judgment. The motion must be based on specified grounds such as mistake, newly discovered evidence, or fraud. Such a motion must generally be filed within 30 days after the entry of the TPR judgment. A person may also appeal to the court of appeals.

Current law does not address the appeal rights of a person who was not a party in the TPR proceeding.

SECTION 23 prohibits a mother who has completed an affidavit relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

5 **SECTION 24.** 48.837 (4) (e) of the statutes is amended to read:

6 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3), ascertain
7 whether the child's paternity of a nonmarital child who is not adopted or whose parents do not
8 subsequently intermarry under s. 767.60 has been acknowledged under s. 767.62 (1) or a
9 substantially similar law of another state or adjudicated in this state or another jurisdiction.
10 ~~If any person has filed a declaration of paternal interest under s. 48.025, the court shall~~
11 ~~determine the rights of that person.~~ If the child's paternity has not been acknowledged or
12 adjudicated ~~and if no person has filed a declaration under s. 48.025,~~ the court shall attempt to
13 ascertain the paternity of the child and shall determine the rights of any person who may be
14 the father of the child as provided under s. 48.423. The court may not proceed with the hearing
15 on the petitions under this section unless the parental rights of the nonpetitioning parent,
16 whether known or unknown, have been terminated.

1 **SECTION 25.** 48.91 (2) of the statutes is amended to read:

2 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted or whose
3 parents do not subsequently intermarry under s. 767.60, the court shall establish ~~whether the~~
4 ~~rights of any persons who have filed declarations of paternal interest under s. 48.025 have been~~
5 ~~determined or~~ whether the child's paternity has been acknowledged under s. 767.62 (1) or a
6 substantially similar law of another state or adjudicated in this state or in another jurisdiction.
7 If the court finds that ~~no such determination has been made~~ child's paternity has not been
8 acknowledged or adjudicated, the court shall proceed, ~~prior to any action on the petition for~~
9 ~~adoption, to attempt to ascertain the paternity of the child and the rights of any person who~~
10 ~~has filed a declaration under s. 48.025~~ shall determine the rights of any person who may be
11 the father of the child as provided under s. 48.423. The court may not proceed with the hearing
12 on the petition for adoption unless the parental rights of the nonpetitioning parent, whether
13 known or unknown, have been terminated.

NOTE: Under current law, a parent who has custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the adoptive parent or parents' home if the home is licensed as a foster home. The petition for placement must be filed with a TPR petition for voluntary consent for the termination of any existing rights of the petitioning parent or parents.

Before holding a hearing on the placement and TPR petitions, the court must ascertain whether the child's paternity has been acknowledged or adjudicated. If any person has filed a declaration of paternal interest, the court must determine the rights of that person. If the child's paternity has not been established and if no person has filed a declaration, the court must attempt to ascertain the paternity of the child. The court may not proceed with the hearing on a placement or TPR petition unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.

At the final adoption hearing, the court must establish whether the rights of any persons who have filed declarations of paternal interest have been determined or whether the child's paternity has been established. If the court finds that no such determination has been made, the court must

proceed to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration before it may take any action on the petition for adoption.

Under the bill draft, before holding a hearing on placement and TPR petitions filed by the child's parent and the proposed adoptive parent or parents, the court must ascertain whether the paternity of a nonmarital child has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. These rights are the rights that are set forth regarding alleged fathers' participation in TPR proceedings, as described above. As under current law, the court may not proceed with the hearing on the petitions unless the parental rights of the nonpetitioning parent have been terminated.

At the final adoption hearing, the court must determine whether a nonmarital child's paternity has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. The bill draft specifies that the court may not proceed with the hearing on the petition for adoption unless the parental rights of the nonpetitioning parent have been terminated.

1 **SECTION 26.** 938.27 (3) (b) 1. a. of the statutes is amended to read:

2 938.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under s.
3 48.025.

4 **SECTION 27.** 938.27 (5) of the statutes is amended to read:

5 938.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify
6 and notify any person who has filed a declaration of paternal interest under s. 48.025, any
7 person who has acknowledged paternity of the child under s. 767.62 (1), and any person who
8 has been adjudged to be the ~~biological~~ father of the juvenile in a judicial proceeding unless
9 the ~~biological father's~~ person's parental rights have been terminated.

NOTE: SECTIONS 26 and 27 make the same changes as SECS. 12 and 13
 for proceedings under the juvenile justice code.

10 **SECTION 28. Initial applicability.**

1 (1) NOTICE OF AND PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The
2 treatment of sections 48.42 (2) (b) (intro.) and 1., 48.422 (6) (a), 48.423, 48.837 (4) (e), and
3 48.91 (2) of the statutes, the renumbering and amendment of sections 48.42 (2m) and 48.43
4 (6) of the statutes, and the creation of sections 48.42 (1g), (2) (am) and (2m) (b) and 48.43 (6)
5 (b) of the statutes first apply to a termination of parental rights petition filed on the effective
6 date of this subsection.

NOTE: SECTION 28 provides that the provisions of the bill draft first
apply to TPR petitions filed on or after the effective date of the
legislation.

7 **SECTION 29. Effective date.**

8 (1) This act takes effect on the first day of the 3rd month beginning after publication.

NOTE: SECTION 29 provides that the act takes effect on the first day of
the 3rd month beginning after publication of the act.

9 (END)