# WISCONSIN LEGISLATIVE COUNCIL
# AMENDMENT MEMO

| 2009 Assembly Bill 214 | Senate Substitute Amendment 2, as Amended |
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| *Memo published*: **April 21, 2010** | *Contact*: **Anne Sappenfield, Senior Staff Attorney (267-9485)** |

## *POSTTERMINATION CONTACT AGREEMENTS*

***Assembly Bill 214*** permits contact by a birth relative, including a birth parent, with a child after termination of parental rights (TPR) in certain situations. A posttermination contact agreement may provide for visitation, future contact and communication, the sharing of information, and the maintenance and sharing of the medical and genetic history.

A posttermination contact agreement may be entered into at any time before a TPR order is granted. If the birth parent who is a party to the agreement agrees to voluntarily consent to the termination of his or her parental rights or not to contest an involuntary TPR before grounds for involuntary TPR are found, any party to the TPR proceeding or any birth relative of the child may propose a posttermination contact agreement. If those circumstances do not apply, only the proposed adoptive parents; the agency having guardianship, legal custody, or supervision of the child; the district attorney, corporation counsel, or other official who filed the TPR petition; or the court, on its own motion, may propose the posttermination contact agreement.

A posttermination contact agreement must contain all of the following provisions:

- An acknowledgement by all birth parents and other relatives who are parties to the agreement that the TPR to and adoption of the child are irrevocable and that failure by a party to comply with the agreement is not grounds to revoke the TPR or adoption.

- An acknowledgement by the proposed adoptive parents that the agreement is enforceable by any person who is permitted posttermination visitation, contact, communication, or sharing of information under the agreement.

- A statement by all parties to the agreement that the agreement was entered into voluntarily and with understanding of the terms of the agreement, that no promises or

threats were made to coerce any person into entering into the agreement, and that the parties have not relied on any representations other than those contained in the agreement.

The bill sets forth the conditions that must be met before a court may approve a posttermination contact agreement. One of the conditions is that posttermination visitation, contact, communication, or sharing of information as provided for in the agreement would be in the best interests of the child based upon factors set forth in the bill.

An agreement that is approved by the court is enforceable under the bill. Under the bill, any party to the agreement may petition the court that approved the agreement for specific performance of the agreement. The petition must allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement, that enforcement of the agreement is in the best interests of the child, and that the petitioner, before filing the petition, participated, or attempted to participate, in good faith mediation or other appropriate dispute resolution proceedings to resolve the dispute giving rise to the filing of the petition.

The parties to a posttermination contact agreement may agree to terminate or modify the agreement. In addition, any party to an agreement may petition the court that approved the agreement to terminate or modify the agreement. The petition must allege facts sufficient to show that termination or modification of the agreement would be in the best interests of the child, or that there has been a substantial change in circumstances since the entry of the last order, and that the petitioner, before filing the petition, participated, or attempted to participate, in good faith mediation or other appropriate dispute resolution proceedings to resolve the issue giving rise to the filing of the petition.

***Senate Substitute Amendment 2*** modifies the provisions of the bill relating to posttermination contact agreements to make them consistent with the Wisconsin Indian Child Welfare Act (WICWA) under s. 48.028, Stats., and the Federal Indian Child Welfare Act (ICWA) which apply to child custody proceedings, as defined in WICWA and ICWA, involving an Indian child. For example, under the substitute amendment in determining whether granting posttermination visitation, contact, communication, or sharing of information as provided in the agreement would be in the best interests of the child, the court must consider, among other factors, any factors that are relevant to the best interests of the child under current law or, in the case of an Indian child, the best interests of an Indian child under current law.

The substitute amendment also provides that, in the case of an Indian child, if a birth parent who is a party to the agreement does not agree to voluntarily consent to TPR or not to contest an involuntary TPR before grounds for involuntary TPR are found, the Indian child's tribe may propose a posttermination contact agreement.

Finally, the substitute amendment provides that, in order to petition for enforcement of a posttermination contact agreement or termination or modification of such an agreement, the petitioner must show that he or she participated, or attempted to participate, in good faith in formal or informal mediation or other appropriate dispute resolution proceedings to resolve the dispute or issue giving rise to the filing of the petition.

***Senate Amendment 1*** to the substitute amendment provides that a posttermination contact agreement is not required to contain an acknowledgement that the TPR to and adoption of the child are irrevocable and that failure by a party to comply with the agreement is not grounds to revoke the TPR or adoption if one of the parties to the agreement is a parent of an Indian child as defined under s. 48.02 (13), Stats.

## ***DISCLOSURE OF HOME STUDY REPORT***

***Assembly Bill 214*** permits a proposed adoptive parent whose home is the subject of a home study to request the agency conducting the study to disclose its report of the home study to another agency authorized to place children for adoption, the state adoption information exchange, or the state adoption center. Within 10 days after receiving such a request, the agency must disclose the report to the person named in the request unless, within those 10 days, the agency petitions the court for an order permitting the agency not to disclose the report, to restrict the information to be disclosed, or to defer disclosure of the report to a later date or for other appropriate relief. The petition filed with the court must allege facts showing good cause for granting the relief requested.

The substitute amendment does not affect this provision.

### ***Legislative History***

Senator Darling offered Senate Substitute Amendment 2 and Senate Amendment 1 to the substitute amendment. On April 20, 2010, the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing recommended adoption of Senate Amendment 1 to the substitute amendment on a vote of Ayes, 4; Noes, 1; adoption of Senate Substitute Amendment 2 on a vote of Ayes, 5; Noes, 0; and concurrence in the bill, as amended, on a vote of Ayes, 4; Noes, 1.

AS:ksm