



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5287/1
EAW:ahe

2019 SENATE BILL 727

January 29, 2020 - Introduced by Senators STROEBEL, OLSEN, JACQUE, DARLING and COWLES, cosponsored by Representatives DITTRICH, PLUMER, BALLWEG, FELZKOWSKI, JAMES, KERKMAN, KULP, MAGNAFICI, MILROY, MURPHY, MURSAU, RAMTHUN, TUSLER, THIESFELDT, TRANEL, BORN, VANDERMEER, TITTL, EDMING and SNYDER. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1 **AN ACT to amend** 48.195 (2) (d) 6., 48.235 (4) (a) 3., 48.235 (4m) (a) 3., 48.29 (1),
2 48.29 (3), 48.30 (2), 48.31 (1), 48.31 (2), 48.31 (4), 48.368 (1), 48.38 (5) (c) 6. b.,
3 48.40 (1r), 48.415 (1) (a) 1., 48.415 (3) (a), 48.415 (5) (intro.), 48.415 (10) (a),
4 48.415 (10) (b), 48.417 (1) (intro.), 48.417 (1) (a), 48.417 (1) (b), 48.417 (1) (c),
5 48.417 (1) (d), 48.417 (2) (intro.), 48.417 (3), 48.417 (4), 48.42 (1) (intro.), 48.42
6 (1g) (a) (intro.), 48.42 (1g) (b), 48.42 (1g) (c), 48.42 (1m) (a), 48.42 (1m) (b), 48.42
7 (1m) (c), 48.42 (2) (intro.), 48.42 (2) (bm) (intro.), 48.42 (2g) (a), 48.42 (2g) (ag),
8 48.42 (2m), 48.42 (4) (title), 48.42 (4) (a), 48.42 (4) (b) 3., 48.42 (4) (b) 4. (intro.),
9 48.422 (title), 48.422 (1), 48.422 (2), 48.422 (3), 48.422 (4), 48.422 (6) (b), 48.422
10 (7) (intro.), 48.422 (7) (a), 48.422 (7) (bm), 48.422 (7) (br), 48.422 (8), 48.422 (9)
11 (a), 48.423 (2) (intro.), 48.424 (1) (intro.), 48.424 (4) (intro.), 48.424 (4) (b),
12 48.425 (1) (am) 2., 48.425 (1) (cm), 48.425 (1m), 48.425 (3), 48.427 (2), 48.43 (1)
13 (intro.), 48.46 (2), 48.46 (3), 48.83 (1), 48.835 (3) (title), 48.835 (3) (a), 48.837 (3),
14 48.837 (4) (e), 48.837 (5), 48.837 (6) (a), 48.837 (6) (b), 48.837 (6) (br) and 48.837

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1 (6) (d); and **to create** 48.23 (2) (bm), 48.29 (1d) and 48.42 (1d) of the statutes;
2 **relating to:** a motion to terminate parental rights.

Analysis by the Legislative Reference Bureau

This bill allows a petition to terminate parental rights (TPR) to be filed in a proceeding in which it is alleged that a child is in need of protection or services (CHIPS).

Under current law, a TPR proceeding is initiated by filing a petition with the court assigned to exercise jurisdiction under the Children's Code (juvenile court). A TPR petition initiates a new proceeding that is unrelated to any other ongoing proceedings concerning the child in the juvenile court. Under this bill, a termination of parental rights may be initiated by filing a motion in an ongoing CHIPS proceeding for the same child.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

3 **SECTION 1.** 48.195 (2) (d) 6. of the statutes is amended to read:

4 48.195 (2) (d) 6. A court conducting proceedings under s. 48.21, proceedings
5 relating to a petition under s. 48.13 (2m) or 48.42 (1) or a motion under s. 48.42 (1d),
6 or dispositional proceedings under subch. VI or VIII relating to the child, the county
7 corporation counsel, district attorney, or agency legal counsel representing the
8 interests of the public in those proceedings, or the guardian ad litem representing
9 the interests of the child in those proceedings.

10 **SECTION 2.** 48.23 (2) (bm) of the statutes is created to read:

11 48.23 (2) (bm) If a motion to terminate parental rights is filed under s. 48.42
12 (1d) in a proceeding involving a child alleged to be in need of protection or services
13 under s. 48.13, any parent who appears before the court shall be represented by
14 counsel as provided under par. (b), beginning with the filing of the motion under s.
15 48.42 (1d).

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1 **SECTION 3.** 48.235 (4) (a) 3. of the statutes is amended to read:

2 48.235 (4) (a) 3. Petition or file a motion for termination of parental rights or
3 any other matter specified under s. 48.14.

4 **SECTION 4.** 48.235 (4m) (a) 3. of the statutes is amended to read:

5 48.235 (4m) (a) 3. Petition or file a motion for termination of parental rights
6 or any other matter specified under s. 48.14 after the child is born.

7 **SECTION 5.** 48.29 (1) of the statutes is amended to read:

8 48.29 (1) The Except as provided under sub. (1d), the child, the child's parent,
9 guardian or legal custodian, the expectant mother, or the unborn child's guardian ad
10 litem, either before or during the plea hearing, may file a written request with the
11 clerk of the court or other person acting as the clerk for a substitution of the judge
12 assigned to the proceeding. Upon filing the written request, the filing party shall
13 immediately mail or deliver a copy of the request to the judge named in the request.
14 When any person has the right to request a substitution of judge, that person's
15 counsel or guardian ad litem may file the request. Not more than one such written
16 request may be filed in any one proceeding, nor may any single request name more
17 than one judge. This section does not apply to proceedings under s. 48.21 or 48.213.

18 **SECTION 6.** 48.29 (1d) of the statutes is created to read:

19 48.29 (1d) The child, the child's parent, guardian or legal custodian, the
20 expectant mother, or the unborn child's guardian ad litem may request substitution
21 of the judge under sub. (1) after the plea hearing in a proceeding if all of the following
22 apply:

23 (a) A motion to terminate parental rights is filed under s. 48.42 (1d) in the
24 proceeding.

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1 (b) There has not been a prior request for substitution under sub. (1) in the
2 proceeding.

3 (c) The request is filed before or during the hearing on the motion to terminate
4 parental rights under s. 48.422 (1).

5 **SECTION 7.** 48.29 (3) of the statutes is amended to read:

6 48.29 (3) Subsections (1) and to (1m) do not apply in any proceeding under s.
7 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom
8 she wishes to be assigned to the proceeding and that judge shall be assigned to the
9 proceeding.

10 **SECTION 8.** 48.30 (2) of the statutes is amended to read:

11 48.30 (2) At the commencement of the hearing under this section the child and
12 the parent, guardian, legal custodian, or Indian custodian; the child expectant
13 mother, her parent, guardian, legal custodian, or Indian custodian, and the unborn
14 child's guardian ad litem; or the adult expectant mother and the unborn child's
15 guardian ad litem; shall be advised of the rights specified in s. 48.243 and shall be
16 informed that a request for a jury trial or for a substitution of judge under s. 48.29
17 must be made before the end of the plea hearing or is waived, except as provided in
18 s. 48.29 (1d). Nonpetitioning parties, including the child, shall be granted a
19 continuance of the plea hearing if they wish to consult with an attorney on the
20 request for a jury trial or substitution of a judge.

21 **SECTION 9.** 48.31 (1) of the statutes is amended to read:

22 48.31 (1) In this section, "fact-finding hearing" means a hearing to determine
23 if the allegations in a petition under s. 48.13 or 48.133 or a petition or motion to
24 terminate parental rights are proved by clear and convincing evidence. In the case
25 of a petition or motion to terminate parental rights to an Indian child, "fact-finding

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1 hearing” means a hearing to determine if the allegations in the petition, other than
2 the allegations under s. 48.42 (1) (e) relating to serious emotional or physical
3 damage, are proved by clear and convincing evidence and if the allegations under s.
4 48.42 (1) (e) relating to serious emotional or physical damage are proved beyond a
5 reasonable doubt as provided in s. 48.028 (4) (e) 1., unless partial summary judgment
6 on the grounds for termination of parental rights is granted.

7 **SECTION 10.** 48.31 (2) of the statutes is amended to read:

8 48.31 (2) The hearing shall be to the court unless the child, the child’s parent,
9 guardian, or legal custodian, the unborn child’s guardian ad litem, or the expectant
10 mother of the unborn child exercises the right to a jury trial by demanding a jury trial
11 at any time before or during the plea hearing. If a jury trial is demanded in a
12 proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons, unless a
13 motion is filed under s. 48.42 (1d). If a jury trial is demanded in a proceeding under
14 s. 48.42, including on a motion filed under s. 48.42 (1d), the jury shall consist of 12
15 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall
16 govern the selection of jurors. If the hearing involves a child victim or witness, as
17 defined in s. 950.02, the court may order that a deposition be taken by audiovisual
18 means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with
19 the district attorney, shall comply with s. 971.105. At the conclusion of the hearing,
20 the court or jury shall make a determination of the facts, except that in a case alleging
21 a child or an unborn child to be in need of protection or services under s. 48.13 or
22 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133
23 relating to whether the child or unborn child is in need of protection or services that
24 can be ordered by the court. If the court finds that the child or unborn child is not
25 within the jurisdiction of the court or, in a case alleging a child or an unborn child

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1 to be in need of protection or services under s. 48.13 or 48.133, that the child or
2 unborn child is not in need of protection or services that can be ordered by the court,
3 or if the court or jury finds that the facts alleged in the petition, or in a motion to
4 terminate parental rights under s. 48.42 (1d), have not been proved, the court shall
5 dismiss the petition or motion with prejudice.

6 **SECTION 11.** 48.31 (4) of the statutes is amended to read:

7 48.31 (4) The court or jury shall make findings of fact and the court shall make
8 conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133
9 or 48.42 (1) or a motion to terminate parental rights under s. 48.42 (1d), except that
10 the court shall make findings of fact relating to whether the child or unborn child is
11 in need of protection or services which can be ordered by the court. In cases alleging
12 a child to be in need of protection or services under s. 48.13 (11), the court may not
13 find that the child is suffering emotional damage unless a licensed physician
14 specializing in psychiatry or a licensed psychologist appointed by the court to
15 examine the child has testified at the hearing that in his or her opinion the condition
16 exists, and adequate opportunity for the cross-examination of the physician or
17 psychologist has been afforded. The judge may use the written reports if the right
18 to have testimony presented is voluntarily, knowingly and intelligently waived by
19 the guardian ad litem or legal counsel for the child and the parent or guardian. In
20 cases alleging a child to be in need of protection or services under s. 48.13 (11m) or
21 an unborn child to be in need of protection or services under s. 48.133, the court may
22 not find that the child or the expectant mother of the unborn child is in need of
23 treatment and education for needs and problems related to the use or abuse of alcohol
24 beverages, controlled substances or controlled substance analogs and its medical,
25 personal, family or social effects unless an assessment for alcohol and other drug

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1 abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted
2 by an approved treatment facility.

3 **SECTION 12.** 48.368 (1) of the statutes is amended to read:

4 48.368 (1) If a petition or motion for termination of parental rights is filed
5 under s. ~~48.41 or 48.415~~ 48.42 or an appeal from a judgment terminating or denying
6 termination of parental rights is filed during the year in which a dispositional order
7 under s. 48.355, an extension order under s. 48.365, a voluntary agreement for
8 placement of the child under s. 48.63, or a guardianship order under ch. 880, 2003
9 stats., or s. 48.977 or ch. 54 is in effect, the dispositional or extension order, voluntary
10 agreement, or guardianship order shall remain in effect until all proceedings related
11 to the filing of the petition or motion for termination of parental rights or an appeal
12 are concluded.

13 **SECTION 13.** 48.38 (5) (c) 6. b. of the statutes is amended to read:

14 48.38 (5) (c) 6. b. Having a petition or motion for the involuntary termination
15 of parental rights filed on behalf of the child.

16 **SECTION 14.** 48.40 (1r) of the statutes is amended to read:

17 48.40 (1r) "Parent" has the meaning given in s. 48.02 (13), except that for
18 purposes of filing a petition or motion seeking the involuntary termination of
19 parental rights under s. 48.415 to a nonmarital child who is not adopted or whose
20 parents do not subsequently intermarry under s. 767.803 and whose paternity has
21 not been established, of finding grounds under s. 48.415 for the involuntary
22 termination of parental rights to such a child, and of terminating the parental rights
23 to such a child on a ground specified in s. 48.415, "parent" includes a person who may
24 be the parent of such a child.

25 **SECTION 15.** 48.415 (1) (a) 1. of the statutes is amended to read:

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1 48.415 (1) (a) 1. That the child has been left without provision for the child's
2 care or support, the petitioner or movant has investigated the circumstances
3 surrounding the matter and for 60 days the petitioner or movant has been unable to
4 find either parent.

5 **SECTION 16.** 48.415 (3) (a) of the statutes is amended to read:

6 48.415 (3) (a) The parent is presently, and for a cumulative total period of at
7 least 2 years within the 5 years immediately prior to the filing of the petition or
8 motion to terminate parental rights has been, an inpatient at one or more hospitals
9 as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s.
10 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental
11 illness as defined in s. 51.01 (13) (a) or (b), developmental disability as defined in s.
12 55.01 (2), or other like incapacities, as defined in s. 55.01 (5);

13 **SECTION 17.** 48.415 (5) (intro.) of the statutes is amended to read:

14 48.415 (5) CHILD ABUSE. (intro.) Child abuse, which shall be established by
15 proving that the parent has exhibited a pattern of physically or sexually abusive
16 behavior which is a substantial threat to the health of the child who is the subject
17 of the petition or motion to terminate parental rights and proving either of the
18 following:

19 **SECTION 18.** 48.415 (10) (a) of the statutes is amended to read:

20 48.415 (10) (a) That the child who is the subject of the petition or motion to
21 terminate parental rights has been adjudged to be in need of protection or services
22 under s. 48.13 (2), (3) or (10); or that the child who is the subject of the petition or
23 motion was born after the filing of a petition or motion under this subsection whose
24 subject is a sibling of the child.

25 **SECTION 19.** 48.415 (10) (b) of the statutes is amended to read:

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1 48.415 (10) (b) That, within 3 years prior to the date the court adjudged the
2 child to be in need of protection or services as specified in par. (a) or, in the case of
3 a child born after the filing of a petition or motion to terminate parental rights as
4 specified in par. (a), within 3 years prior to the date of birth of the child, a court has
5 ordered the termination of parental rights with respect to another child of the person
6 whose parental rights are sought to be terminated on one or more of the grounds
7 specified in this section.

8 **SECTION 20.** 48.417 (1) (intro.) of the statutes is amended to read:

9 48.417 (1) FILING OR JOINING IN PETITION OR MOTION; WHEN REQUIRED. (intro.)
10 Subject to sub. (2), an agency or the district attorney, corporation counsel, or other
11 appropriate official designated under s. 48.09 shall file a petition under s. 48.42 (1)
12 or a motion under s. 48.42 (1d) to terminate the parental rights of a parent or the
13 parents of a child, or, if a petition under s. 48.42 (1) or motion under s. 48.42 (1d) to
14 terminate those parental rights has already been filed, the agency, district attorney,
15 corporation counsel or other appropriate official shall join in the petition or motion,
16 if any of the following circumstances apply:

17 **SECTION 21.** 48.417 (1) (a) of the statutes is amended to read:

18 48.417 (1) (a) The child has been placed outside of his or her home, as described
19 in s. 48.365 (1) or 938.365 (1), in a foster home, group home, nonsecured residential
20 care center for children and youth, or shelter care facility for 15 of the most recent
21 22 months, not including any period during which the child was a runaway from the
22 out-of-home placement or was residing in a trial reunification home. If the
23 circumstances specified in this paragraph apply, the petition or motion to terminate
24 parental rights shall be filed or joined in by the last day of the 15th month, as
25 described in this paragraph, for which the child was placed outside of his or her home.

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1 **SECTION 22.** 48.417 (1) (b) of the statutes is amended to read:

2 48.417 (1) (b) A court of competent jurisdiction has found under s. 48.13 (2) or
3 under a law of any other state or a federal law that is comparable to s. 48.13 (2) that
4 the child was abandoned when he or she was under one year of age or has found that
5 the parent abandoned the child when the child was under one year of age in violation
6 of s. 948.20 or in violation of the law of any other state or federal law, if that violation
7 would be a violation of s. 948.20 if committed in this state. If the circumstances
8 specified in this paragraph apply, the petition or motion to terminate parental rights
9 shall be filed or joined in within 60 days after the date on which the court of
10 competent jurisdiction found that the child was abandoned as described in this
11 paragraph.

12 **SECTION 23.** 48.417 (1) (c) of the statutes is amended to read:

13 48.417 (1) (c) A court of competent jurisdiction has found that the parent has
14 committed, has aided or abetted the commission of, or has solicited, conspired, or
15 attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation
16 of the law of any other state or federal law, if that violation would be a violation of
17 s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, and that the victim of
18 that violation is a child of the parent. If the circumstances specified in this paragraph
19 apply, the petition or motion to terminate parental rights shall be filed or joined in
20 within 60 days after the date on which the court assigned to exercise jurisdiction
21 under this chapter determines, based on a finding that a circumstance specified in
22 this paragraph applies, that reasonable efforts to make it possible for the child to
23 return safely to his or her home are not required.

24 **SECTION 24.** 48.417 (1) (d) of the statutes is amended to read:

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1 48.417 (1) (d) A court of competent jurisdiction has found that the parent has
2 committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or
3 (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a), (3) (a), or (5) (a) 1., 2.,
4 or 3., 948.051, or 948.085, a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies,
5 or a violation of the law of any other state or federal law, if that violation would be
6 a violation listed under this paragraph if committed in this state, and that the
7 violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial
8 bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.
9 If the circumstances specified in this paragraph apply, the petition or motion to
10 terminate parental rights shall be filed or joined in within 60 days after the date on
11 which the court assigned to exercise jurisdiction under this chapter determines,
12 based on a finding that a circumstance specified in this paragraph applies, that
13 reasonable efforts to make it possible for the child to return safely to his or her home
14 are not required.

15 **SECTION 25.** 48.417 (2) (intro.) of the statutes is amended to read:

16 48.417 (2) **FILING OR JOINING IN PETITION OR MOTION; WHEN NOT REQUIRED.** (intro.)
17 Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c) or (d)
18 may apply, an agency or the district attorney, corporation counsel or other
19 appropriate official designated under s. 48.09 need not file a petition under s. 48.42
20 (1) or motion under s. 48.42 (1d) to terminate the parental rights of a parent or the
21 parents of a child, or, if a petition ~~under s. 48.42 (1)~~ or motion to terminate those
22 parental rights has already been filed, the agency, district attorney, corporation
23 counsel or other appropriate official need not join in the petition, if any of the
24 following circumstances apply:

25 **SECTION 26.** 48.417 (3) of the statutes is amended to read:

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1 48.417 (3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition or motion to
2 terminate parental rights is filed or joined in as required under sub. (1), the agency
3 primarily responsible for providing services to the child under a court order shall,
4 during the pendency of the proceeding on the petition or motion, work with the
5 agency identified in the report under s. 48.425 (1) (f) that would be responsible for
6 accomplishing the adoption of the child in processing and approving a qualified
7 family for the adoption of the child.

8 **SECTION 27.** 48.417 (4) of the statutes is amended to read:

9 48.417 (4) NOTICE TO DEPARTMENT. If a petition or motion to terminate parental
10 rights is filed or joined in as required under sub. (1), the person who filed or joined
11 in the petition or motion shall notify the department of that filing or joinder.

12 **SECTION 28.** 48.42 (1) (intro.) of the statutes is amended to read:

13 48.42 (1) PETITION. (intro.) ~~A~~ Except as provided under sub. (1d), a proceeding
14 for the termination of parental rights shall be initiated by petition which may be filed
15 by the child's parent, an agency or a person authorized to file a petition under s. 48.25
16 or 48.835. The petition shall be entitled "In the interest of (child's name), a
17 person under the age of 18" and shall set forth with specificity:

18 **SECTION 29.** 48.42 (1d) of the statutes is created to read:

19 48.42 (1d) MOTION TO TERMINATE PARENTAL RIGHTS OF A CHILD ALLEGED TO BE IN
20 NEED OF PROTECTION OR SERVICES. If there is an open proceeding under s. 48.13 for the
21 child, the termination of parental rights may be initiated by filing a motion in that
22 open proceeding. A motion under this subsection may be filed by the child's parent,
23 an agency, or a person authorized to file a petition under s. 48.25 or 48.835, who is
24 a party to the open proceeding, and shall set forth with specificity the information

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1 required in sub. (1) (c) and (e). A motion filed under this subsection is subject to the
2 procedures of this subchapter.

3 **SECTION 30.** 48.42 (1g) (a) (intro.) of the statutes is amended to read:

4 48.42 (1g) (a) (intro.) Except as provided in par. (c), if the petition or motion to
5 terminate parental rights is filed by a person or agency other than the district
6 attorney, corporation counsel, or other appropriate official under s. 48.09; if the
7 petition or motion seeks to terminate the parental rights of a person who may be the
8 father of a nonmarital child who is under one year of age at the time the petition or
9 motion is filed, who is not adopted or whose parents do not subsequently intermarry
10 under s. 767.803, and whose paternity has not been established; and if the mother
11 of the child has voluntarily consented to or seeks to voluntarily consent to the
12 termination of her parental rights to the child, the petitioner or movant may file with
13 the petition or motion an affidavit signed by the mother that includes all of the
14 following:

15 **SECTION 31.** 48.42 (1g) (b) of the statutes is amended to read:

16 48.42 (1g) (b) The petitioner or movant shall notify any man identified in the
17 affidavit under par. (a) as an alleged father of his right to file a declaration of paternal
18 interest under s. 48.025 before the birth of the child, within 14 days after the birth
19 of the child, or within 21 days after the date on which the notice is mailed, whichever
20 is later; of the birth date or anticipated birth date of the child; and of the
21 consequences of filing or not filing a declaration of paternal interest. The petitioner
22 or movant shall include with the notice a copy of the form required to file a
23 declaration of paternal interest under s. 48.025. The notice shall be sent by certified
24 mail to the last-known address of the alleged father.

25 **SECTION 32.** 48.42 (1g) (c) of the statutes is amended to read:

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1 48.42 **(1g)** (c) If an affidavit under par. (a) is not filed with the petition or
2 motion, notice shall be given to an alleged father under sub. (2).

3 **SECTION 33.** 48.42 (1m) (a) of the statutes is amended to read:

4 48.42 **(1m)** (a) If the petition filed under sub. (1) or motion filed under sub. (1d)
5 includes a statement of the grounds for involuntary termination of parental rights
6 under sub. (1) (c) 2., the petitioner or movant may, at the time the petition under sub.
7 (1) or motion under sub. (1d) is filed, also petition the court for a temporary order and
8 an injunction prohibiting the person whose parental rights are sought to be
9 terminated from visiting or contacting the child who is the subject of the petition
10 under ~~sub. (1) or motion~~. Any petition under this paragraph shall allege facts
11 sufficient to show that prohibiting visitation or contact would be in the best interests
12 of the child.

13 **SECTION 34.** 48.42 (1m) (b) of the statutes is amended to read:

14 48.42 **(1m)** (b) Subject to par. (e), the court may issue the temporary order ex
15 parte or may refuse to issue the temporary order and hold a hearing on whether to
16 issue an injunction. The temporary order is in effect until a hearing is held on the
17 issuance of an injunction. The court shall hold a hearing on the issuance of an
18 injunction on or before the date of the hearing on the petition or motion to terminate
19 parental rights under s. 48.422 (1).

20 **SECTION 35.** 48.42 (1m) (c) of the statutes is amended to read:

21 48.42 **(1m)** (c) Notwithstanding any other order under s. 48.355 (3), the court,
22 subject to par. (e), may grant an injunction prohibiting the respondent from visiting
23 or contacting the child if the court determines that the prohibition would be in the
24 best interests of the child. An injunction under this subsection is effective according
25 to its terms but may not remain in effect beyond the date the court dismisses the

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1 petition or motion for termination of parental rights under s. 48.427 (2) or issues an
2 order terminating parental rights under s. 48.427 (3).

3 **SECTION 36.** 48.42 (2) (intro.) of the statutes is amended to read:

4 48.42 (2) WHO MUST BE SUMMONED. (intro.) Except as provided in sub. (2m), the
5 petitioner or movant shall cause the summons and petition or motion to terminate
6 parental rights to be served upon the following persons:

7 **SECTION 37.** 48.42 (2) (bm) (intro.) of the statutes is amended to read:

8 48.42 (2) (bm) (intro.) If the child is a nonmarital child who is under one year
9 of age at the time the petition or motion to terminate parental rights is filed and who
10 is not adopted or whose parents do not subsequently intermarry under s. 767.803 and
11 whose paternity has not been established and if an affidavit under sub. (1g) (a) is filed
12 with the petition or motion to terminate parental rights:

13 **SECTION 38.** 48.42 (2g) (a) of the statutes is amended to read:

14 48.42 (2g) (a) In addition to causing the summons and petition or motion to
15 terminate parental rights to be served as required under sub. (2), the petitioner or
16 movant shall also notify any foster parent or other physical custodian described in
17 s. 48.62 (2) of the child of all hearings on the petition or motion. The first notice to
18 any foster parent or other physical custodian described in s. 48.62 (2) shall be
19 written, shall have a copy of the petition or motion attached to it, shall state the
20 nature, location, date, and time of the initial hearing and shall be mailed to the
21 last-known address of the foster parent or other physical custodian described in s.
22 48.62 (2). Thereafter, notice of hearings may be given by telephone at least 72 hours
23 before the time of the hearing. The person giving telephone notice shall place in the
24 case file a signed statement of the time notice was given and the person to whom he
25 or she spoke.

SENATE BILL 727**SECTION 39**

1 **SECTION 39.** 48.42 (2g) (ag) of the statutes is amended to read:

2 48.42 **(2g)** (ag) In the case of an involuntary termination of parental rights to
3 a child whom the petitioner or movant knows or has reason to know is an Indian
4 child, the petitioner or movant shall cause the summons and petition or motion to be
5 served on the Indian child's parent and Indian custodian in the manner specified in
6 s. 48.028 (4) (a). In like manner, the petitioner or movant shall also notify the Indian
7 child's tribe of all hearings on the petition or motion. The first notice to an Indian
8 child's tribe shall be written, shall have a copy of the petition or motion attached to
9 it, and shall state the nature, location, date, and time of the initial hearing. No
10 hearing may be held on the petition or motion until at least 10 days after receipt of
11 notice of the hearing by the Indian child's parent, Indian custodian, and tribe or, if
12 the identity or location of the Indian child's parent, Indian custodian, or tribe cannot
13 be determined, until at least 15 days after receipt of the notice by the U.S. secretary
14 of the interior. On request of the Indian child's parent, Indian custodian, or tribe, the
15 court shall grant a continuance of up to 20 additional days to enable the requester
16 to prepare for the hearing.

17 **SECTION 40.** 48.42 (2m) of the statutes is amended to read:

18 48.42 **(2m)** NOTICE NOT REQUIRED. (a) *Parent as a result of sexual assault.*
19 Except as provided in this paragraph, notice is not required to be given to a person
20 who may be the father of a child conceived as a result of a sexual assault in violation
21 of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085 if a physician attests
22 to his or her belief that a sexual assault as specified in this paragraph has occurred
23 or if the person who may be the father of the child has been convicted of sexual assault
24 as specified in this paragraph for conduct which may have led to the child's
25 conception. A person who under this paragraph is not given notice does not have

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1 standing to appear and contest a petition or motion for the termination of his
2 parental rights, present evidence relevant to the issue of disposition, or make
3 alternative dispositional recommendations. This paragraph does not apply to a
4 person who may be the father of a child conceived as a result of a sexual assault in
5 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time
6 of the sexual assault.

7 (b) *Parent of nonmarital child.* A person who may be the father of a nonmarital
8 child who is not adopted or whose parents do not subsequently intermarry under s.
9 767.803 and whose paternity has not been established, by virtue of the fact that he
10 has engaged in sexual intercourse with the mother of the child, is considered to be
11 on notice that a pregnancy and a termination of parental rights proceeding
12 concerning the child may occur, and has the duty to protect his own rights and
13 interests. He is therefore entitled to actual notice of such a proceeding only as
14 provided in sub. (2) (b) or (bm). A person who is not entitled to notice under sub. (2)
15 (b) or (bm) does not have standing to appear and contest a petition or motion for the
16 termination of his parental rights, present evidence relevant to the issue of
17 disposition, or make alternative dispositional recommendations.

18 **SECTION 41.** 48.42 (4) (title) of the statutes is amended to read:

19 48.42 (4) (title) MANNER OF SERVING SUMMONS AND PETITION OR MOTION TO
20 TERMINATE PARENTAL RIGHTS.

21 **SECTION 42.** 48.42 (4) (a) of the statutes is amended to read:

22 48.42 (4) (a) *Personal service.* Except as provided in this paragraph, par. (b),
23 and sub. (2g) (ag), a copy of the summons and petition or motion to terminate
24 parental rights shall be served personally upon the parties specified in sub. (2), if
25 known, at least 7 days before the date of the hearing. Service of summons is not

SENATE BILL 727**SECTION 42**

1 required if the party submits to the jurisdiction of the court. Service upon parties
2 who are not natural persons and upon persons under a disability shall be as
3 prescribed in s. 801.11.

4 **SECTION 43.** 48.42 (4) (b) 3. of the statutes is amended to read:

5 48.42 (4) (b) 3. At the time the petition or motion to terminate parental rights
6 is filed, the petitioner or movant may move the court for an order waiving the
7 requirement of constructive notice to a person who, although his identity is
8 unknown, may be the father of a nonmarital child.

9 **SECTION 44.** 48.42 (4) (b) 4. (intro.) of the statutes is amended to read:

10 48.42 (4) (b) 4. (intro.) A notice published under this subsection shall be
11 published as a class 1 notice under ch. 985. In determining which newspaper is likely
12 to give notice as required under s. 985.02 (1), the petitioner, movant, or court shall
13 consider the residence of the party, if known, or the residence of the relatives of the
14 party, if known, or the last-known location of the party. If the party's post-office
15 address is known or can, with due diligence, be ascertained, a copy of the summons
16 and petition or motion to terminate parental rights shall be mailed to the party upon
17 or immediately prior to the first publication. The mailing may be omitted if the
18 petitioner or movant shows that the post-office address cannot be obtained with due
19 diligence. Except as provided in subd. 5., the notice shall include the date, place and
20 circuit court branch for the hearing, the court file number, the name, address and
21 telephone number of the petitioner's or movant's attorney and information the court
22 determines to be necessary to give effective notice to the party or parties. Such
23 information shall include the following, if known:

24 **SECTION 45.** 48.422 (title) of the statutes is amended to read:

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1 **48.422** (title) **Hearing on the petition or motion to terminate parental**
2 **rights.**

3 **SECTION 46.** 48.422 (1) of the statutes is amended to read:

4 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
5 or motion to terminate parental rights shall be held within 30 days after the petition
6 or motion is filed. At the hearing on the petition or motion to terminate parental
7 rights the court shall determine whether any party wishes to contest the petition or
8 motion and inform the parties of their rights under sub. (4) and s. 48.423.

9 **SECTION 47.** 48.422 (2) of the statutes is amended to read:

10 48.422 (2) Except as provided in s. 48.42 (2g) (ag), if the petition or motion to
11 terminate parental rights is contested the court shall set a date for a fact-finding
12 hearing to be held within 45 days after the hearing on the petition or motion, unless
13 all of the necessary parties agree to commence with the hearing on the merits
14 immediately.

15 **SECTION 48.** 48.422 (3) of the statutes is amended to read:

16 48.422 (3) If the petition or motion to terminate parental rights is not contested
17 the court shall hear testimony in support of the allegations in the petition or motion,
18 including testimony as required in sub. (7).

19 **SECTION 49.** 48.422 (4) of the statutes is amended to read:

20 48.422 (4) Any party who is necessary to the proceeding or whose rights may
21 be affected by an order terminating parental rights shall be granted a jury trial upon
22 request if the request is made before the end of the initial hearing on the petition or
23 motion to terminate parental rights.

24 **SECTION 50.** 48.422 (6) (b) of the statutes is amended to read:

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1 48.422 (6) (b) If the court determines that an unknown person may be the
2 father of the child and notice to that person has not been waived under s. 48.42 (4)
3 (b) 3., the court shall determine whether constructive notice will substantially
4 increase the likelihood of notice to that person. If the court does determine that it
5 would substantially increase the likelihood of notice and the petitioner or movant
6 has not already caused the notice to be published or the court determines that the
7 publication used was not sufficient, the court shall adjourn the hearing for a period
8 not to exceed 30 days and shall order constructive notice under s. 48.42 (4) (b). If the
9 court determines that constructive notice will not substantially increase the
10 likelihood of notice to that person, the court shall order that the hearing proceed.

11 **SECTION 51.** 48.422 (7) (intro.) of the statutes is amended to read:

12 48.422 (7) (intro.) Before accepting an admission of the alleged facts in a
13 petition or motion to terminate parental rights, the court shall:

14 **SECTION 52.** 48.422 (7) (a) of the statutes is amended to read:

15 48.422 (7) (a) Address the parties present and determine that the admission
16 is made voluntarily with understanding of the nature of the acts alleged in the
17 petition or motion to terminate parental rights and the potential dispositions.

18 **SECTION 53.** 48.422 (7) (bm) of the statutes is amended to read:

19 48.422 (7) (bm) Establish whether a proposed adoptive parent of the child has
20 been identified. If a proposed adoptive parent of the child has been identified and
21 the proposed adoptive parent is not a relative of the child, the court shall order the
22 petitioner or movant to submit a report to the court containing the information
23 specified in s. 48.913 (7). The court shall review the report to determine whether any
24 payments or agreement to make payments set forth in the report are coercive to the
25 birth parent of the child or to an alleged to presumed father of the child or are

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1 impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth
2 parent of the child, an alleged or presumed father of the child or the child conditional
3 in any part upon transfer or surrender of the child or the termination of parental
4 rights or the finalization of the adoption creates a rebuttable presumption of
5 coercion. Upon a finding of coercion, the court shall dismiss the petition or motion
6 to terminate parental rights or amend the agreement to delete any coercive
7 conditions, if the parties agree to the amendment. Upon a finding that payments
8 which are impermissible under s. 48.913 (4) have been made, the court may dismiss
9 the petition and may refer the matter to the district attorney for prosecution under
10 s. 948.24 (1). This paragraph does not apply if the petition or motion was filed with
11 a petition for adoptive placement under s. 48.837 (2).

12 **SECTION 54.** 48.422 (7) (br) of the statutes is amended to read:

13 48.422 (7) (br) Establish whether any person has coerced a birth parent or any
14 alleged or presumed father of the child in violation of s. 48.63 (3) (b) 5. Upon a finding
15 of coercion, the court shall dismiss the petition or motion to terminate parental
16 rights.

17 **SECTION 55.** 48.422 (8) of the statutes is amended to read:

18 48.422 (8) If the petition or motion for termination of parental rights is filed
19 by an agency enumerated in s. 48.069 (1) or (2), the court shall order the agency to
20 file a report with the court as provided in s. 48.425 (1), except that, if the child is an
21 Indian child, the court may order the agency or request the tribal child welfare
22 department of the Indian child's tribe to file that report.

23 **SECTION 56.** 48.422 (9) (a) of the statutes is amended to read:

24 48.422 (9) (a) If a petition or motion for termination of the rights of a birth
25 parent, as defined under s. 48.432 (1) (am), is filed by a person other than an agency

SENATE BILL 727**SECTION 56**

1 enumerated under s. 48.069 (1) or (2) or if the court waives the report required under
2 s. 48.425, the court shall order any parent whose rights may be terminated to file
3 with the court the information specified under s. 48.425 (1) (am).

4 **SECTION 57.** 48.423 (2) (intro.) of the statutes is amended to read:

5 48.423 (2) RIGHTS OF OUT-OF-STATE FATHERS. (intro.) A person who may be the
6 father of a nonmarital child who is not adopted or whose parents do not subsequently
7 intermarry under s. 767.803 and whose paternity has not been established may
8 contest the petition or motion to terminate parental rights, present evidence relevant
9 to the issue of disposition, and make alternative dispositional recommendations if
10 the person appears at the hearing, establishes paternity under sub. (1), and proves
11 all of the following by a preponderance of the evidence:

12 **SECTION 58.** 48.424 (1) (intro.) of the statutes is amended to read:

13 48.424 (1) (intro.) The purpose of the fact-finding hearing is to determine in
14 cases in which the petition or motion was contested at the hearing on the petition or
15 motion to terminate parental rights under s. 48.422 all of the following:

16 **SECTION 59.** 48.424 (4) (intro.) of the statutes is amended to read:

17 48.424 (4) (intro.) If grounds for the termination of parental rights are found
18 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
19 not preclude a dismissal of a petition or motion to terminate parental rights under
20 s. 48.427 (2). Except as provided in s. 48.23 (2) (b) 3., the court shall then proceed
21 immediately to hear evidence and motions related to the dispositions enumerated in
22 s. 48.427. Except as provided in s. 48.42 (2g) (ag), the court may delay making the
23 disposition and set a date for a dispositional hearing no later than 45 days after the
24 fact-finding hearing if any of the following apply:

25 **SECTION 60.** 48.424 (4) (b) of the statutes is amended to read:

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1 48.424 (4) (b) The court has not yet received a report to the court on the history
2 of the child as provided in s. 48.425 and the court now orders an agency enumerated
3 in s. 48.069 (1) or (2) to file that report with the court, or, in the case of an Indian child,
4 now orders that agency or requests the tribal child welfare department of the Indian
5 child's tribe to file such a report, before the court makes the disposition on the
6 petition or motion to terminate parental rights.

7 **SECTION 61.** 48.425 (1) (am) 2. of the statutes is amended to read:

8 48.425 (1) (am) 2. A report of any medical examination which either birth
9 parent had within one year before the date of the petition or motion to terminate
10 parental rights.

11 **SECTION 62.** 48.425 (1) (cm) of the statutes is amended to read:

12 48.425 (1) (cm) If the petition or motion is seeking the involuntary termination
13 of parental rights to an Indian child, specific information showing that continued
14 custody of the child by the parent or Indian custodian is likely to result in serious
15 emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the Indian
16 child has previously been adjudged to be in need of protection or services, specific
17 information showing that active efforts under s. 48.028 (4) (e) 2. have been made to
18 prevent the breakup of the Indian child's family and that those efforts have proved
19 unsuccessful.

20 **SECTION 63.** 48.425 (1m) of the statutes is amended to read:

21 48.425 (1m) The agency required under sub. (1) to file the report shall prepare
22 the medical record within 60 days after the date of the petition or motion for the
23 termination of parental rights.

24 **SECTION 64.** 48.425 (3) of the statutes is amended to read:

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1 48.425 (3) The court may order a report as specified under this section to be
2 prepared by an agency in those cases where the petition or motion to terminate
3 parental rights is filed by someone other than an agency.

4 **SECTION 65.** 48.427 (2) of the statutes is amended to read:

5 48.427 (2) The court may dismiss the petition or motion to terminate parental
6 rights if it finds that the evidence does not warrant the termination of parental
7 rights.

8 **SECTION 66.** 48.43 (1) (intro.) of the statutes is amended to read:

9 48.43 (1) (intro.) The court shall enter a judgment setting forth its findings and
10 disposition in accordance with s. 48.426 in an order implementing the disposition
11 chosen. If the court dismisses the petition or motion to terminate parental rights
12 under s. 48.427 (2), the order shall contain the reasons for dismissal. If the
13 disposition is for the termination of parental rights under s. 48.427 (3), the order
14 shall contain all of the following:

15 **SECTION 67.** 48.46 (2) of the statutes is amended to read:

16 48.46 (2) A parent who has consented to the termination of his or her parental
17 rights under s. 48.41 or who did not contest the petition or motion initiating the
18 ~~proceeding in which his or her parental rights were terminated~~ termination of
19 parental rights proceeding may move the court for relief from the judgment on any
20 of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion for relief
21 shall be filed within 30 days after the entry of the judgment or order terminating
22 parental rights, unless the parent files a timely notice of intent to pursue relief from
23 the judgment under s. 808.04 (7m), in which case the motion for relief shall be filed
24 within the time permitted by s. 809.107 (5). A motion for relief under this subsection
25 does not affect the finality or suspend the operation of the judgment or order

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1 terminating parental rights. A parent who has consented to the termination of his
2 or her parental rights to an Indian child under s. 48.41 (2) (e) may also move for relief
3 from the judgment under s. 48.028 (5) (c) or (6). ~~Motions~~ A motion for relief under
4 this subsection or s. 48.028 (5) (c) or (6) and appeals to the court of appeals shall be
5 the exclusive remedies for such a parent to obtain a new hearing in a termination of
6 parental rights proceeding.

7 **SECTION 68.** 48.46 (3) of the statutes is amended to read:

8 48.46 (3) An adoptive parent who has been granted adoption of a child under
9 s. 48.91 (3) may not petition the court for a rehearing under sub. (1) or move the court
10 under s. 806.07 for relief from the order granting adoption. A petition or motion for
11 termination of parental rights under s. 48.42 and an appeal to the court of appeals
12 shall be the exclusive remedies for an adoptive parent who wishes to end his or her
13 parental relationship with his or her adopted child.

14 **SECTION 69.** 48.83 (1) of the statutes is amended to read:

15 48.83 (1) Except as provided in s. 48.028 (3) (b), the court of the county where
16 the proposed adoptive parent or child resides or the court of the county where a
17 petition or motion for termination of parental rights to the child was filed or granted
18 under subch. VIII, upon the filing with that court of a petition for adoption or for the
19 adoptive placement of a child, has jurisdiction over the child until the petition for
20 adoption is withdrawn, denied, or granted. Venue in a proceeding for adoption or
21 adoptive placement of a child shall be in the county where the proposed adoptive
22 parent or child resides at the time the petition for adoption is filed or in the county
23 where a petition or motion for termination of parental rights to the child was filed
24 or granted under subch. VIII. The court may transfer the case to a court in the county
25 in which the proposed adoptive parents reside.

SENATE BILL 727**SECTION 70**

1 **SECTION 70.** 48.835 (3) (title) of the statutes is amended to read:

2 48.835 (3) (title) PETITION OR MOTION FOR TERMINATION OF PARENTAL RIGHTS
3 REQUIRED; EXCEPTION.

4 **SECTION 71.** 48.835 (3) (a) of the statutes is amended to read:

5 48.835 (3) (a) If the child's parent has not filed a petition or motion for the
6 termination of parental rights under s. 48.42, the relative with whom the child is
7 placed shall file a petition for the termination of the parents' rights at the same time
8 the petition for adoption is filed, except as provided under par. (b).

9 **SECTION 72.** 48.837 (3) of the statutes is amended to read:

10 48.837 (3) PETITION OR MOTION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED.
11 The petition under sub. (2) shall be filed with a petition or motion under s. 48.42 for
12 the voluntary consent to the termination of any existing rights of the petitioning
13 parent or parents.

14 **SECTION 73.** 48.837 (4) (e) of the statutes is amended to read:

15 48.837 (4) (e) Shall, before hearing the petitions petition under subs. sub. (2)
16 and petition or motion under sub. (3), ascertain whether the paternity of a
17 nonmarital child who is not adopted or whose parents do not subsequently
18 intermarry under s. 767.803 has been acknowledged under s. 767.805 or a
19 substantially similar law of another state or adjudicated in this state or another
20 jurisdiction. If the child's paternity has not been acknowledged or adjudicated, the
21 court shall attempt to ascertain the paternity of the child and shall determine the
22 rights of any person who may be the father of the child as provided under s. 48.423.
23 The court may not proceed with the hearing on the petitions or motion under this
24 section unless the parental rights of the nonpetitioning parent, whether known or
25 unknown, have been terminated.

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1 **SECTION 74.** 48.837 (5) of the statutes is amended to read:

2 48.837 (5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or
3 over, and each petitioner shall attend the hearing on the petition under sub. (2). The
4 child, if he or she is 12 years of age or over, and each parent having custody of the child
5 shall attend the hearing on the petition or motion under sub. (3). If the parent who
6 has custody of the child consents and the court approves, the proposed adoptive
7 parents may be present at the hearing on the petition or motion under sub. (3). The
8 court may, for good cause, waive the requirement that the child attend either of the
9 hearings.

10 **SECTION 75.** 48.837 (6) (a) of the statutes is amended to read:

11 48.837 (6) (a) The court shall hold the hearing on the petition under sub. (2)
12 before the hearing on the petition or motion required under sub. (3).

13 **SECTION 76.** 48.837 (6) (b) of the statutes is amended to read:

14 48.837 (6) (b) At the beginning of the hearing held under sub. (2), the court shall
15 review the report that is submitted under s. 48.913 (6). The court shall determine
16 whether any payments or the conditions specified in any agreement to make
17 payments are coercive to the birth parent of the child or to an alleged or presumed
18 father of the child or are impermissible under s. 48.913 (4). Making any payment to
19 or on behalf of the birth parent of the child, an alleged or presumed father of the child
20 or the child conditional in any part upon transfer or surrender of the child or the
21 termination of parental rights or the finalization of the adoption creates a rebuttable
22 presumption of coercion. Upon a finding of coercion, the court shall dismiss the
23 ~~petitions~~ petition under subs. ~~sub.~~ (2) and petition or motion under sub. (3) or amend
24 the agreement to delete any coercive conditions, if the parties agree to the
25 amendment. Upon a finding that payments which are impermissible under s. 48.913

SENATE BILL 727**SECTION 76**

1 (4) have been made, the court may dismiss the petition under sub. (2) and may refer
2 the matter to the district attorney for prosecution under s. 948.24 (1).

3 **SECTION 77.** 48.837 (6) (br) of the statutes is amended to read:

4 48.837 (6) (br) At the hearing on the petition under sub. (2), the court shall
5 determine whether any person has coerced a birth parent or any alleged or presumed
6 father of the child in violation of sub. (1r) (e). Upon a finding of coercion, the court
7 shall dismiss the ~~petitions~~ petition under ~~subs.~~ sub. (2) and the petition or motion
8 under sub. (3).

9 **SECTION 78.** 48.837 (6) (d) of the statutes is amended to read:

10 48.837 (6) (d) If the proposed placement is approved, the court shall proceed
11 immediately to a hearing on the petition or motion required under sub. (3). If the
12 parental rights of the parent are terminated, the court shall appoint as guardian of
13 the child the department, a county department under s. 48.57 (1) (e) or (hm), or a
14 child welfare agency licensed to accept guardianship under s. 48.61 (5). If the child
15 has not been placed with the proposed adoptive parent or parents under sub. (1r) or
16 (4) (d), the court shall order the child to be placed with the proposed adoptive parent
17 or parents. If the child has been placed with the proposed adoptive parent or parents
18 under sub. (1r) or (4) (d), the court shall order the child to be maintained in that
19 placement.

20 **SECTION 79. Initial applicability.**

21 (1) This act first applies to a motion to terminate parental rights filed in a
22 proceeding for which a petition is filed under s. 48.25 on the effective date of this
23 subsection.

24

(END)