

**CHAPTER 330, Laws of 1979**

AN ACT to amend 48.025 (2), 48.14 (2) (b), 48.185, 48.66, 48.91 (2), 51.42 (9) (a), 51.437 (12) (a) and 55.03; to repeal and recreate subchapter VIII of chapter 48; and to create 48.01 (1) (g) and 48.356 of the statutes, relating to termination of parental rights.

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

SECTION 1. 48.01 (1) (g) of the statutes is created to read:

48.01 (1) (g) To provide children in the state with permanent and stable family relationships. The courts and agencies responsible for child welfare should assist parents in changing any circumstances in the home which might harm the child or which may require the child to be placed outside the home.

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

48.025 (2) The declaration provided in sub. (1) may be filed at any time except after a termination of the natural father's rights under ~~s. 48.425 or 48.43~~ subch. VIII. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

SECTION 3. 48.14 (2) (b) of the statutes is amended to read:

48.14 (2) (b) The appointment and removal of a guardian of the person for a child under ss. ~~48.427~~, 48.43 and 48.85 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

SECTION 4. 48.185 of the statutes is amended to read:

**48.185 Venue.** (1) Venue for any proceeding under ss. 48.12, 48.125, 48.13, 48.135, 48.14 and 48.18 may be in any of the following: the county where the child resides, the county where the child is present or, in the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred. Venue for proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child's parent pursuant to a dispositional order, in which case venue is as provided in sub. (2).

(2) Venue for any proceeding under s. 48.363 or 48.365, or under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child or parent.

SECTION 5. 48.356 of the statutes is created to read:

**48.356 Duty of court to warn.** (1) Whenever the judge orders a child to be placed outside the home because the child has been adjudged to be in need of protection or services under s. 48.345, 48.357, 48.363 or 48.365, the judge shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable.

(2) In addition to sub. (1), any written order which places a child outside the home under sub. (1) shall notify the parent or parents of the grounds for termination of parental rights under s. 48.415.

SECTION 6. Subchapter VIII of chapter 48 of the statutes, as affected by chapter 32, laws of 1979, is repealed and recreated to read:

CHAPTER 48

SUBCHAPTER VIII

TERMINATION OF PARENTAL RIGHTS

**48.40 Definitions.** In this subchapter:

(1) "Agency" means the department, a county department of social services or a licensed child welfare agency.

(2) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

**48.41 Voluntary consent to termination of parental rights.** (1) The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standard and factors specified in s. 48.426.

(2) The court may accept a voluntary consent to termination of parental rights only as follows:

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent and is satisfied that the consent is informed and voluntary; or

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before a judge of any court of record. This written consent shall be accompanied by the signed findings of the judge who accepted the parent's consent. These findings shall recite that the judge questioned the parent and found that the consent was informed and voluntary before the judge accepted the consent of the parent.

(c) A person who may be the father of a child born out of wedlock, but who has not been adjudicated to be the father, may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(3) The consent of a minor or incompetent person to the termination of his or her parental rights shall not be accepted by the court unless it is joined by the consent of his or her guardian ad litem. If the guardian ad litem joins in the consent to the termination of parental rights with the minor or incompetent person, minority or incompetence shall not be grounds for a later attack on the order terminating parental rights.

**48.415 Grounds for involuntary termination of parental rights.** At the fact-finding hearing the court may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) **ABANDONMENT.** (a) Abandonment may be established by a showing that:

1. The child has been left without provision for its care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent;

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer; or

3. The child has been left by the parent with a relative or other person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of one year or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2 or 3. The time periods under par. (a) 2 or 3 shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) A showing under par. (a) that abandonment has occurred may be rebutted by other evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services may be established by a showing that the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363 or 48.365 containing the notice required by s. 48.356 (2), that the agency responsible for the care of the child and the family has made a diligent effort to provide the services required by the court, and:

(a) The child has been outside the home for a cumulative total period of one year or longer pursuant to such orders and the parent has substantially neglected or wilfully refused to remedy the conditions which resulted in the removal of the child from the home; or

(b) The child has been outside the home for a cumulative total period of 2 years or longer pursuant to such orders, the parent has been unable to remedy the conditions which resulted in the removal of the child from the home and there is a substantial likelihood that the parent will not be able to remedy these conditions in the future.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability may be established by a showing that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (1) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or developmental disability as defined in s. 55.01 (2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF VISITATION RIGHTS. Continuing denial of visitation rights may be established by a showing that:

(a) The parent has been denied visitation rights by court order in an action affecting marriage;

(b) At least 2 years have elapsed since the order denying visitation rights was issued and the court has not subsequently modified its order so as to permit visitation rights; and

(c) The parent would not be entitled to visitation rights if he or she were to seek such rights at the time the petition for termination of parental rights is filed.

(5) **REPEATED ABUSE.** Repeated abuse may be established by a showing that on more than one occasion the parent has caused death or injury to a minor or minors living in the parent's household resulting in 2 or more separate felony convictions.

(6) **FAILURE TO ASSUME PARENTAL RESPONSIBILITY.** (a) Failure to assume parental responsibility may be established by a showing that a child has been born out of wedlock, not subsequently legitimated or adopted, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and:

1. The person or persons who may be the father of the child have been given notice under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the court and that such person or persons have never had a substantial parental relationship with the child; or

2. That although paternity to the child has been adjudicated under s. 48.423, the father did not establish a substantial parental relationship with the child prior to the adjudication of paternity although the father had reason to believe that he was the father of the child and had an opportunity to establish a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child or the mother during her pregnancy and whether the person has neglected or refused to provide care or support even though the person had the opportunity and ability to do so.

**48.42 Procedure.** (1) **PETITION.** A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child's parent, an agency or a person authorized to file a petition under s. 48.25. The petition shall be entitled "In the interest of ..... (child's name), a person under the age of 18" and shall set forth with specificity:

(a) The name, birth date and address of the child;

(b) The names and addresses of the child's parent or parents, guardian and legal custodian;

(c) A statement that consent will be given to termination of parental rights as provided in s. 48.41 or a statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges gives rise to these grounds.

(2) **WHO MUST BE SUMMONED.** Except as provided in sub. (2m), the petitioner shall cause the summons and petition to be served upon the following persons:

(a) The parent or parents of the child.

(b) If the child was born out of wedlock, and not subsequently legitimated or adopted and paternity has not been established:

1. A person who has filed a declaration of interest under s. 48.025.

2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice under s. 48.41 (2) (c).

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

(c) The guardian, guardian ad litem and legal custodian of the child.

(d) Any other person to whom notice is required to be given by ch. 822, excluding foster parents.

(e) To the child if the child is 12 years of age or older.

(2m) NOTICE NOT REQUIRED. Notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault or of incest if a physician attests to his or her belief that a sexual assault or incest has occurred.

(3) CONTENTS OF SUMMONS. The summons shall:

(a) Contain the name and birth date of the child, and the nature, location, date and time of the initial hearing.

(b) Advise the party, if applicable, of his or her right to legal counsel, regardless of ability to pay under s. 48.23 and ch. 977.

(c) Advise the parties of the possible result of the hearing and the consequences of failure to appear or respond.

(4) MANNER OF SERVING SUMMONS AND PETITION. (a) *Personal service.* A copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 10 days before the date of the hearing, except that service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

(b) *Constructive notice.* 1. If with reasonable diligence a party specified in sub. (2) cannot be served under par. (a), service shall be made by publication of the notice under subd. 4.

2. If the child is born out of wedlock and not legitimated or adopted and paternity has not been adjudicated, the court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd. 4.

3. At the time the petition is filed, the petitioner may move the court for an order waiving the requirement of constructive notice to a person who, although his identity is unknown, may be the father of a child born out of wedlock.

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

- a. The name of the party or parties to whom notice is being given;
- b. A description of the party or parties;
- c. The former address of the party or parties;
- d. The approximate date and place of conception of the child; and
- e. The date and place of birth of the child.

5. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the child unless the court finds that inclusion of the child's name is essential to give effective notice to the father.

(c) The notice under par. (a) or (b) shall also inform parties that the parental rights of a parent or alleged parent who fails to appear may be terminated, of the party's right to have an attorney present and that if a person desires to contest termination of parental rights and believes that he or she cannot afford an attorney, the person may ask the state public defender to represent him or her.

**48.422 Hearing on the petition.** (1) The hearing on the petition to terminate parental rights shall be held within 30 days after the petition is filed. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under sub. (4) and s. 48.423.

(2) If the petition is contested the court shall set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately.

(3) If the petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7).

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

(5) Any nonpetitioning party, including the child, shall be granted a continuance of the hearing for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for the substitution of a judge.

(6) (a) If the child was born out of wedlock and not legitimated or adopted and paternity has not been established, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

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

(c) If paternity is adjudicated under this subchapter and parental rights are not terminated, the court may make and enforce such orders for the suitable care, custody and support of the child as a court having jurisdiction over actions affecting marriage may make under ch. 767. If there is a finding by the court that the child is in need of protection or services, the court may make dispositional orders under s. 48.345.

(7) Before accepting an admission of the alleged facts in a petition, the court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(b) Establish whether any promises or threats were made to elicit an admission and alert all unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

(8) If the petition for termination of parental rights is filed by an agency enumerated in s. 48.069 (1) or (2), the court shall order the agency to submit a report to the court as provided in s. 48.425.

**48.423 Rights of persons alleging paternity.** 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 shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the man claiming to be the father of the child of any right to counsel under s. 48.23. The man claiming to be the father of the child must prove paternity by clear and convincing evidence.

**48.424 Fact-finding hearing.** (1) The purpose of the fact-finding hearing is to determine whether grounds exist for the termination of parental rights in those cases where the termination was contested at the hearing on the petition under s. 48.422.

(2) The fact-finding hearing shall be conducted according to the procedure specified in s. 48.31 except that:

- (a) The court may exclude the child from the hearing; and
- (b) The hearing shall be closed to the public.

(3) If the facts are determined by a jury, the jury may only decide whether any grounds for the termination of parental rights have been proven. The court shall decide what disposition is in the best interest of the child.

(4) If grounds for the termination of parental rights are found the court shall proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if:

- (a) All parties to the proceeding agree; or
- (b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 from an agency enumerated in s. 48.069 (1) or (2) and the court now directs the agency to prepare this report to be considered before the court makes the disposition on the petition.

(5) If the court delays making a permanent disposition under sub. (4), it may transfer temporary custody of the child to an agency for placement of the child until the dispositional hearing.

**48.425 Court report by an agency.** (1) If the petition for the termination of parental rights is filed by the department, a county department of public welfare or social services or a licensed child welfare agency, or if the court orders a report under s. 48.424 (4) (b), the agency shall file a report with the court which shall include:

- (a) The social history of the child.
- (b) A statement of the facts supporting the need for termination.
- (c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned to the family, and the steps the person or agency has taken to effect this return.
- (d) A statement of other appropriate services, if any, which might allow the child to return to the home of the parent.
- (e) A statement applying the standards and factors enumerated in s. 48.426 (2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (2) (a) and include a presentation of the

factors which might prevent adoption, those which would facilitate it, and the agency which would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427 (2) (a) determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting, including the agency to be named guardian of the child.

(2) The court may waive the report required under this section if consent is given under s. 48.41.

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

**48.426 Standard and factors.** (1) **COURT CONSIDERATIONS.** In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) **STANDARD.** The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) **FACTORS.** In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

**48.427 Dispositions.** Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the following dispositions within 10 days:

(1) Dismiss the petition if the court finds that the evidence does not warrant the termination of parental rights.

(2) (a) Enter an order permanently terminating the parental rights of one or both parents. If the rights of both parents or of the only living parent are terminated, the court shall:

1. Transfer guardianship and custody of the child pending adoptive placement to:

a. A county department of social services in counties having a population of 500,000 or more;

b. A county department of social services licensed to accept guardianship under s. 48.57 (1) (hm);

c. A child welfare agency licensed under s. 48.60; or

d. The department; or

2. Transfer guardianship of the child to one of the agencies listed in subd. 1 and physical custody of the child to a suitable individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(b) The guardian appointed under par. (a) shall report to the court on the status of the child 6 months after the date the order was made and thereafter every year on the anniversary date that the first report was made until the child is adopted.

(3) Enter an order terminating the parental rights of one or both parents and placing the child in sustaining care under s. 48.428.

**48.428 Sustaining care.** (1) A court may place a child in sustaining care whenever the court has terminated the parental rights of the parent or parents of the child and the court finds that the child is unlikely to be adopted or that adoption is not in the best interest of the child.

(2) When a court places a child in sustaining care, the court shall transfer legal custody of the child to the county department of social services or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (2) (a) and place the child in the home of a licensed foster parent with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent shall be a sustaining parent with the powers and duties specified in sub. (3).

(3) Subject to the authority of the guardian and legal custodian of the child and to any treatment or dispositional plans for the child established by the court, the sustaining parent has the rights and responsibilities necessary for the day-to-day care of the child, including but not limited to:

(a) The authority to consent to routine and emergency health care for the child.

(b) The authority to sign the child's application for a license under s. 343.15.

(c) The authority to approve the child's participation in school and youth group activities.

(d) The authority to travel out of state with the child and consent to the child's travel out of state.

(e) The authority to act as the child's parent under ss. 115.80, 115.81 and 118.125.

(4) Before a licensed foster parent may be appointed as a sustaining parent, the foster parent shall execute a contract with the agency responsible for providing services to the child, in which the foster parent agrees to provide care for the child until the child's 18th birthday unless the placement order is changed by the court because the court finds that the sustaining parents are no longer able or willing to provide the sustaining care or the court finds that the behavior of the sustaining parents toward the child would constitute grounds for the termination of parental rights if the sustaining parent was the natural parent of the child.

(5) The agency appointed as legal custodian for a child in sustaining care shall report to the court annually on the status of the child.

(6) The court may order or prohibit visitation by a natural parent of a child placed in sustaining care.

**48.43 Court orders; contents and effect.** (1) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. The order shall contain:

(a) The identity of the agency which will receive guardianship and custody of the child upon termination, if the rights of both parents are terminated, and which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting; and

(b) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible, and the plan for treatment.

(2) An order terminating parental rights permanently severs all legal rights and duties between the parent and the child.

(3) If only one parent consents under s. 48.41 or if the grounds specified in s. 48.415 are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent.

(4) A certified copy of the order terminating parental rights, a certified copy of the birth certificate of the child, and a transcript of the testimony in the termination of parental rights hearing shall be furnished by the court to the agency given guardianship or placement for adoption of the child or to the person or agency given custodianship or guardianship for placement of the child in sustaining care.

(5) Any guardian receiving a child for placement for adoption or for sustaining care appointed under this subchapter shall file with the court a report in writing on the status of the child at the end of 6 months following the date of the order appointing the guardian and on each anniversary date of the order. The court order may specify details regarding particular aspects of the care and treatment, development and special needs of the child to be included in the guardian's report.

(6) Judgments under this subchapter terminating parental rights are final and appealable under s. 48.47, except that appeal shall be taken within 30 days of the date the order is entered.

**48.435 Custody of children.** The mother of a child born out of wedlock has legal custody of the child unless the court grants legal custody to another person or transfers legal custody to an agency.

SECTION 7. 48.66 of the statutes is amended to read:

**48.66 Licensing duties of the department.** The department shall license and supervise child welfare agencies, as required by s. 48.60, group homes, as required by s. 48.625, shelter care facilities, as required by s. 48.48 and day care centers, as required by s. 48.65. The department may license foster homes, as provided by s. 48.62, and may license and supervise county departments of social services or public welfare ~~as provided in s. 48.43 (1) (am)~~ in accordance with the procedures specified in ss. 48.67 to 48.74.

SECTION 8. 48.91 (2) of the statutes is amended to read:

48.91 (2) In an adoption proceeding for a child born out of wedlock and not subsequently legitimated or adopted, the court shall establish whether the rights of any persons who have filed declarations of paternal interest under s. 48.025 have been determined under s. 48.425 or by a similar procedure whether paternity has been adjudicated in this state or in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed ~~under s. 48.425~~, prior to any action on the petition for adoption, to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration under s. 48.025. The termination of a parent's parental rights is required as provided in subch. VIII prior to the adoption of the child unless the parent consents to the adoption under s. 48.84.

SECTION 9. 51.42 (9) (a) of the statutes is amended to read:

51.42 (9) (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs such facility. The need for inpatient care shall be determined by the clinical director of the program. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the patient is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections according to s. 46.036, unless the department determines that a charge is administratively infeasible, or unless the depart-

ment, after individual review, determines that the charge is not attributable to the cost of basic care and services. However, boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a), commitments under s. 971.14, 971.17, 975.01, 975.02, 975.06 or admissions under s. 975.17, or children placed in the guardianship or legal custody of the department under s. 48.355, 48.427 or 48.43. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client.

SECTION 10. 51.437 (12) (a) of the statutes is amended to read:

51.437 (12) (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs such facility. The need for inpatient care shall be determined by the clinical director of the program prior to the admission of a patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the individual receiving care is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections according to s. 46.036, unless the department determines that a charge is administratively infeasible, or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client. Boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a), commitments under s. 971.14, 971.17, 975.01, 975.02, 975.06, admissions under s. 975.17, or children placed in the guardianship or legal custody of the department under s. 48.355, 48.427 or 48.43.

SECTION 11. 55.03 of the statutes is amended to read:

**55.03 Status of guardian.** No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under s. 48.427 or 48.43.

SECTION 12. **Applicability.** (1) This act applies to proceedings for the termination of parental rights which are commenced on or after the effective date of this act except as otherwise provided under this section.

(2) In determining whether grounds for termination of parental rights exist and in making dispositional orders, the court may consider the convictions of the parent and other court judgments and orders relating to the parent and the child which were rendered prior to the effective date of this act.

(3) In determining whether the parent abandoned the child as provided in section 48.415 (1) (a) 1 of the statutes, as created by this bill, the 60-day time period may include a time period which occurred prior to the effective date of this act.

(4) The court shall apply sections 48.185, 48.41, 48.42, 48.422, 48.423, 48.424, 48.425 and 48.427 of the statutes, as affected by this act, to proceedings for the termination of parental rights commenced before the effective date of this act and not disposed of on the effective date of this act unless the court finds on its own motion or after one of the parties objects to the court that applying these sections may adversely affect a substantive right of the party or the child.

SECTION 13. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

Statute Sections	A	Old Cross-References	B	New Cross-References	C
48.14 (1), (2)(a)		ss. 48.40 to 48.43		subch. VIII	
52.21 (2)		ss. 48.48 to 48.43		subch. VIII of	
786.37		s. 48.43		ch. 48	
806.04 (3m)		s. 48.425		subch. VIII of	
				ch. 48	

**SECTION 14. Effective date.** This act takes effect on the first day of the 4th month after its publication.

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