

1991 Assembly Bill 180

Date of enactment: April 28, 1992  
Date of publication\*: May 12, 1992

## 1991 WISCONSIN ACT 263

AN ACT *to repeal* 146.78 (1) (b) and 146.78 (5); *to renumber and amend* 48.275 (3) and 48.373; *to amend* 48.23 (4), 48.299 (1) (a), 48.37, 48.396 (2), 48.981 (1) (fm), 809.82 (2) (a), 977.05 (4) (i) 5, 977.08 (1) and 977.08 (2) (e); *to repeal and recreate* 46.24 and 146.78 (1) (a) 5; and *to create* 48.067 (7m), 48.16, 48.23 (1) (cm), 48.235 (1) (d), 48.255 (5), 48.257, 48.27 (9), 48.273 (4), 48.275 (3) (b), 48.29 (3), 48.315 (1m), 48.373 (2), 48.373 (3), 48.375, 809.105, 809.14 (4), 809.40 (1m), 809.62 (2m), 809.82 (2) (c) and 895.037 of the statutes, **relating to:** requiring consent for an unemancipated minor's abortion, granting rule-making authority and providing a penalty.

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

**SECTION 3.** 46.24 of the statutes is repealed and recreated to read:

**46.24 Assistance to minors concerning parental consent for abortion.** If a minor who is contemplating an abortion requests assistance from a county department under s. 46.215, 46.22 or 46.23 in seeking the consent of the minor's parent, guardian or legal custodian, or in seeking the consent of an adult family member, as defined in s. 48.375 (2) (b), for the contemplated abortion or in seeking a waiver from the circuit court, the county department shall provide assistance, including, if so requested, accompanying the minor as appropriate.

**SECTION 4.** 48.067 (7m) of the statutes is created to read:

**48.067 (7m)** At the request of a minor who claims to be pregnant, assist the minor in preparing a petition to initiate a proceeding under s. 48.375 (7) and file the petition with the clerk of circuit court.

**SECTION 5.** 48.16 of the statutes is created to read:

**48.16 Jurisdiction over petitions for waiver of parental consent to a minor's abortion.** Any circuit court within this state has jurisdiction over a proceeding under s. 48.375 (7) for waiver of the parental consent requirement under s. 48.375 (4).

**SECTION 6.** 48.23 (1) (cm) of the statutes is created to read:

**48.23 (1) (cm)** Any minor who is subject to the jurisdiction of the circuit court under s. 48.16 and who is required to appear in court shall be represented by counsel.

**SECTION 7.** 48.23 (4) of the statutes is amended to read:

**48.23 (4) PROVIDING COUNSEL.** In any situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, except for situations arising under sub. (2) where the child entitled to representation is a parent; and counsel is not knowingly and voluntarily waived; and it appears that the person is unable to afford counsel in full, or the person so indicates; the court shall refer the person to the authority for indigency determinations specified under s. 977.07 (1), except that if counsel is appointed in a petition filed under s. 48.375 (7) the indigency determination specified under s. 977.07 (1) shall be waived and counsel shall be appointed by the state public defender under s. 977.08 within 24 hours after an initial appearance under s. 48.375 (7). Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to

continue to represent the child. In any situation under sub. (2) in which a parent is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay.

**SECTION 8.** 48.235 (1) (d) of the statutes is created to read:

48.235 (1) (d) The circuit court may appoint a guardian ad litem for a minor in a proceeding under s. 48.375 (7) to aid the circuit court in determining under s. 48.375 (7) (c) whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of the abortion is in the minor's best interests.

**SECTION 9.** 48.255 (5) of the statutes is created to read:

48.255 (5) Subsections (1) to (4) do not apply to petitions to initiate a proceeding under s. 48.375 (7).

**SECTION 10.** 48.257 of the statutes is created to read:

**48.257 Petition to initiate a procedure to waive parental consent prior to a minor's abortion.** (1) A petition to initiate a proceeding under s. 48.375 (7) shall be entitled, "In the interest of 'Jane Doe', a person under the age of 18", and shall set forth with specificity:

(a) The name "Jane Doe" and the minor's date of birth.

(b) A statement that the minor is pregnant and the estimated gestational age of the fetus at the time that the petition is filed, and a statement that the minor is seeking an abortion.

(c) The name and address of the person who intends to perform or induce the abortion, if known. If that person is not known, the name and address of the clinic or other medical facility that intends to perform or induce the abortion, if known.

(d) A request for waiver of the parental consent requirement under s. 48.375 (4).

(e) A statement alleging that the minor is mature and well-informed enough to make her own decision on whether or not to have an abortion and facts sufficient to establish that the minor is mature enough and well-informed enough to make her own decision.

(f) A statement alleging that, if the circuit court does not find that the minor is mature enough and well-informed enough to make her own decision, the circuit court should find that having an abortion is in the minor's best interest and facts sufficient to establish that an abortion is in the minor's best interest.

(g) A statement acknowledging that the minor has been fully informed of the risks and consequences of abortion and the risks and consequences of carrying the pregnancy to term.

(h) If the minor is not represented by counsel, the place where and the manner in which the minor wishes to be notified of proceedings under s. 48.375 (7) until appointment of counsel under s. 48.375 (7) (a) 1. If the petition is filed by a clergyman on behalf of the minor, the place where and manner in which the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).

(2) The director of state courts shall provide simplified forms for use in filing a petition under this section to the clerk of circuit court in each county.

(3) The minor who is seeking the abortion shall sign the name "Jane Doe" on the petition to initiate a proceeding under s. 48.375 (7). No other person may be required to sign the petition.

(4) The clerk of circuit court shall give a copy of the petition to the minor or to the member of the clergy who files a petition on behalf of the minor, if any.

(5) The minor, or the intake worker under s. 48.067 (7m), shall file the completed petition under this section with the clerk of circuit court.

(6) No filing fee may be charged for a petition under this section.

**SECTION 11.** 48.27 (9) of the statutes is created to read:

48.27 (9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only to the minor, her counsel, if any, the clergyman who filed the petition on behalf of the minor, if any, and her guardian ad litem, if any. The notice shall contain the title and case number of the proceeding, and the nature, location, date and time of the hearing or other proceeding. Notice to the minor or to the member of the clergy, if any, shall be provided as requested under s. 48.257 (1) (h) and, after appointment of the minor's counsel, if any, by her counsel.

**SECTION 12.** 48.273 (4) of the statutes is created to read:

48.273 (4) (a) Subsections (1) and (3) do not apply to any proceeding under s. 48.375 (7).

(b) Personal service is required for notice of all proceedings under s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the minor shall be in the manner and at the place designated in the petition under s. 48.257 (1) until appointment of the minor's counsel, if any, under s. 48.375 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7) unless the minor waives the immediate notice. If the minor waives the immediate notice, the notice shall be served at least 24 hours before the time of the hearing

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under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in acknowledging receipt of service of the notice, sign the name “Jane Doe” in lieu of providing the minor’s full signature.

(c) The expenses of service of notice and the travel expenses and fees allowed in ch. 885 incurred by any person who is required to appear, other than the minor who is named in the petition, in any proceeding under s. 48.375 (7) shall be paid by the county in which the circuit court that holds the proceeding is located.

**SECTION 13.** 48.275 (3) of the statutes is renumbered 48.275 (3) (intro.) and amended to read:

48.275 (3) (intro.) This section does not apply to the any of the following:

(a) The parents or guardian of a person who is subject to s. 48.366 with respect to the costs of the person’s legal representation for a hearing under s. 48.366.

**SECTION 14.** 48.275 (3) (b) of the statutes is created to read:

48.275 (3) (b) Any proceeding under s. 48.375 (7).

**SECTION 15.** 48.29 (3) of the statutes is created to read:

48.29 (3) Subsections (1) to (2) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom she wishes to be assigned to the proceeding and that judge shall be assigned to the proceeding.

**SECTION 16.** 48.299 (1) (a) of the statutes is amended to read:

48.299 (1) (a) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. ~~48.16 or~~ 48.17 (2) unless a public fact-finding hearing is demanded by a child through his or her counsel. However, the court shall refuse to grant the public hearing if the victim of an alleged sexual assault objects or, in a nondelinquency proceeding other than a proceeding under s. 48.375 (7), if a parent or guardian objects. All hearings under s. 48.375 (7) shall be held in chambers, unless a public fact-finding hearing is demanded by the child through her counsel. If a public hearing is not held, only the parties, their counsel, witnesses and other persons requested by a party and approved by the court may be present. ~~Any~~ Except in a proceeding under s. 48.375 (7), any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court.

**SECTION 17.** 48.315 (1m) of the statutes is created to read:

48.315 (1m) Subsection (1) (a), (d), (e) and (g) does not apply to proceedings under s. 48.375 (7).

**SECTION 18.** 48.37 of the statutes is amended to read:

**48.37 Costs.** No costs, penalty assessments or jail assessments may be assessed against any child in a court assigned to exercise jurisdiction under this chapter or in a circuit court exercising jurisdiction under s. 48.16.

Courts of civil and criminal jurisdiction exercising jurisdiction under s. 48.17 may assess the same costs, penalty assessments and jail assessments against children as they may assess against adults, except that witness fees shall not be charged to the child.

**SECTION 19.** 48.373 of the statutes is renumbered 48.373 (1) and amended to read:

48.373 (1) The court assigned to exercise jurisdiction under this chapter may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and consents.

**SECTION 20.** 48.373 (2) of the statutes is created to read:

48.373 (2) Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

**SECTION 21.** 48.373 (3) of the statutes is created to read:

48.373 (3) In a proceeding under s. 48.375 (7), a circuit court exercising jurisdiction under s. 48.16 may not authorize any medical services other than the performance or inducement of an abortion.

**SECTION 22.** 48.375 of the statutes is created to read:

**48.375 Parental consent required prior to abortion; judicial waiver procedure. (1) LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that:

1. Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

2. The medical, emotional and psychological consequences of abortion and of childbirth are serious and can be lasting, particularly when the patient is immature.

3. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related.

4. Parents ordinarily possess information essential to a physician’s exercise of the physician’s best medical judgment concerning a minor.

5. Parents who are aware that their minor is pregnant or has had an abortion may better ensure that she receives adequate medical attention during her pregnancy or after her abortion.

6. Parental knowledge of a minor’s pregnancy and parental consent to an abortion are usually desirable and in the best interest of the minor.

(b) It is the intent of the legislature in enacting this section to further the purposes set forth in s. 48.01, and in particular to further the important and compelling state interests in:

1. Protecting minors against their own immaturity.
2. Fostering the family structure and preserving it as a viable social unit.

3. Protecting the rights of parents to rear minors who are members of their households.

(2) DEFINITIONS. In this section:

(a) “Abortion” means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a minor after implantation of a fertilized human ovum and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) “Adult family member” means any of the following who is at least 25 years of age:

1. Grandparent.
2. Aunt.
3. Uncle.
4. Sister.
5. Brother.

(bm) “Clergyman” has the meaning given in s. 765.002 (1).

(c) “Counselor” means a physician including a physician specializing in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained member of the clergy. “Counselor” does not include any person who is employed by or otherwise affiliated with a reproductive health care facility, a family planning clinic or a family planning agency; any person affiliated with the performance of abortions, except abortions performed to save the life of the mother; or any person who may profit from giving advice to seek an abortion.

(d) Notwithstanding s. 48.02 (2m), “court” means any circuit court within this state.

(e) “Emancipated minor” means a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority.

(g) “Physician” means a person licensed to practice medicine and surgery under ch. 448.

(h) “Referring physician” means a physician who refers a minor to another physician for the purpose of obtaining an abortion.

(3) APPLICABILITY. This section applies whether or not the minor who initiates the proceeding is a resident of this state.

(4) PARENTAL CONSENT REQUIRED. (a) Except as provided in this section, no person may perform or induce an abortion on or for a minor who is not an emancipated minor unless the person is a physician and one of the following applies:

1. The person or the person’s agent has, either directly or through a referring physician or his or her agent, received and made part of the minor’s medical record the written consent of the minor and the written consent of one of her parents; or of the minor’s guardian or legal custodian, if one has been appointed; or of an

adult family member of the minor; or of one of the minor’s foster parents, if the minor has been placed in a foster home and the minor’s parent has signed a waiver granting the department, a county department under s. 46.215, 46.22 or 46.23 or the foster parent the authority to consent to medical services or treatment on behalf of the minor.

2. The court has granted a petition under sub. (7).

(b) Paragraph (a) does not apply if the person who intends to perform or induce the abortion is a physician and any of the following occurs:

1. The person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion.

- 1g. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record and report the sexual intercourse as required under s. 48.981 (2) or (2m) (e). Any minor who makes a false statement under this subdivision which the minor does not believe is true, is subject to a proceeding under s. 48.12 or 48.13 (12), whichever is applicable, based on a violation of s. 946.32 (2).

- 1m. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor’s foster parents, if the minor has been placed in a foster home and the minor’s parent has signed a waiver granting the department, a county department under s. 46.215, 46.22 or 46.23 or the foster parent the authority to consent to medical services or treatment on behalf of the minor, for consent.

2. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that the pregnancy is the result of sexual intercourse that must be reported under s. 48.981 (2m) (d) 1. a., b., c. or f. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record. The person who intends to perform or induce the abortion shall report the sexual intercourse as required under s. 48.981 (2m) (d) 1. a., b., c. or f.

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3. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor, or the minor's guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or a foster parent, if the minor has been placed in a foster home and the minor's parent has signed a waiver granting the department, a county department under s. 46.215, 46.22 or 46.23 or the foster parent the authority to consent to medical services or treatment on behalf of the minor, has abused, as defined in s. 48.981 (1) (a), the minor. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record. The person who intends to perform or induce the abortion shall report the abuse as required under s. 48.981 (2).

(5) **COUNSELING.** Any minor who is pregnant and who is seeking an abortion and any minor who has had an abortion may receive counseling from a counselor of her choice. A county department under s. 46.215, 46.22 or 46.23 may refer the minor to a private counselor.

(6) **RIGHT TO PETITION COURT FOR WAIVER.** Any pregnant minor who is seeking an abortion in this state, and any member of the clergy on the minor's behalf, may file a petition specified under s. 48.257 with any court for a waiver of the parental consent requirement under sub. (4) (a) 1.

(7) **COURT PROCEDURE.** (a) *Receipt of petition; initial appearance.* On the date that a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next calendar day, the court shall hold an initial appearance in chambers at which the minor or the member of the clergy who filed the petition on behalf of the minor, if any, is present and shall do all of the following:

1. Appoint legal counsel under s. 48.23 (1) (cm) for the minor if the minor is not represented by counsel.

3. Set a time for a hearing on the petition that will enable the court to comply with the time limit specified in par. (d) 1.

4. Notify the minor, the minor's counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and the minor's guardian ad litem, if any, of the time, date and place of the hearing.

(am) *Guardian ad litem; appointment.* At the initial appearance under par. (a), the court may also, in its discretion, appoint a guardian ad litem under s. 48.235 (1) (d).

(b) *Hearing; evidence.* The court shall hold a confidential hearing on a petition that is filed by a minor. The hearing shall be held in chambers, unless a public fact-finding hearing is demanded by the minor through her counsel. At the hearing, the court shall consider the report of the guardian ad litem, if any, and hear evidence relating to all of the following:

1. The emotional development, maturity, intellect and understanding of the minor.

2. The understanding of the minor about the nature of, possible consequences of and alternatives to the intended abortion procedure.

3. Any other evidence that the court may find useful in making the determination under par. (c).

(bm) *Clergyman's affidavit.* If a member of the clergy files a petition under s. 48.257 on behalf of a minor, the member of the clergy shall file with the petition an affidavit stating that the member of the clergy has met personally with the minor and has explored with the minor the alternative choices available to the minor for managing the pregnancy, including carrying the pregnancy to term and keeping the infant, carrying the pregnancy to term and placing the infant with a relative or with another family for adoption or having an abortion, and has discussed with the minor the possibility of involving one of the persons specified in sub. (4) (a) 1. in the minor's decision making concerning the pregnancy and whether or not in the opinion of the minor that involvement would be in the minor's best interests. The court may make the determination under par. (c) on the basis of the ordained member of the clergy's affidavit or may, in its discretion, require the minor to attend an interview with the court in chambers before making that determination. Any information supplied by a minor to a member of the clergy in preparation of the petition under s. 48.257 or the affidavit under this paragraph shall be kept confidential and may only be disclosed to the court in connection with a proceeding under this subsection.

(c) *Determination.* The court shall grant the petition if the court finds that any of the following standards applies:

1. That the minor is mature and well-informed enough to make the abortion decision on her own.

2. That the performance or inducement of the abortion is in the minor's best interests.

(d) *Time limit.* 1. The court shall make the determination under par. (c) and issue an order within 3 calendar days after the initial appearance unless the minor and her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of the time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a certified copy of the court's order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a copy of the court's order denying the petition and shall also

notify the minor by her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, that she has a right to initiate an appeal under s. 809.105.

1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to comply with the time limits specified under subd. 1 without the prior consent of the minor and the minor's counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, the minor and the minor's counsel, if any, or the member of the clergy, if any, shall select a temporary reserve judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order granting or denying the petition and the chief judge of the judicial administrative district in which the court is located shall assign the temporary reserve judge selected by the minor and the minor's counsel, if any, or the member of the clergy, if any, to make the determination and issue the order. A temporary reserve judge assigned under this subdivision to make a determination under par. (c) and issue an order granting or denying a petition shall make the determination and issue the order within 2 calendar days after the assignment, unless the minor and her counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of that time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition, and shall notify the minor of the court's order, as provided under subd. 1.

2. Counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall immediately, upon notification under subd. 1 or 1m that the court has granted or denied the petition, notify the minor. If the court has granted the petition, counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the court order to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this subdivision shall place the copy in the minor's medical record.

(e) *Confidentiality.* The identity of a minor who files or for whom is filed a petition under s. 48.257 and all records and other papers relating to a proceeding under this subsection shall be kept confidential except for use in a forfeiture action under s. 895.037 (2), a civil action filed under s. 895.037 (3) or a child abuse or neglect investigation under s. 48.981.

(f) *Certain persons barred from proceedings.* No parent, or guardian or legal custodian, if one has been appointed, or foster parent, if the minor has been placed in a foster home and the minor's parent has signed a waiver granting the department, a county department under s. 46.215, 46.22 or 46.23 or the foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, of any minor who is seeking a court determination under this subsection may attend, intervene or give evidence in any proceeding under this subsection.

(8) **APPEAL.** An appeal by a minor from an order of the trial court denying a petition under sub. (7) may be taken to the court of appeals as a matter of right under s. 808.03 (1) and is governed by s. 809.105.

**SECTION 23.** 48.396 (2) of the statutes is amended to read:

48.396 (2) Records of the court assigned to exercise jurisdiction under this chapter and of courts exercising jurisdiction under s. ~~48.16~~ or 48.17 (2) shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter or as permitted under s. 48.375 (7) (e). Upon request of the department to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department. Upon request of the federal government to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the federal agency.

**SECTION 23g.** 48.981 (1) (fm) of the statutes is amended to read:

48.981 (1) (fm) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law ~~or~~ sister-in-law, stepuncle or steppaunt.

**SECTION 24.** 146.78 (1) (a) 5. of the statutes is repealed and recreated to read:

146.78 (1) (a) 5. If the woman is a minor, the availability of services under s. 46.24 to assist a minor who is contemplating an abortion and who wishes to seek the

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consent of the minor's parent, guardian or legal custodian, or the consent of an adult family member, as defined in s. 48.375 (2) (b), of the minor, for the contemplated abortion, or who wishes to seek a waiver from the circuit court under s. 48.375 (7).

**SECTION 25.** 146.78 (1) (b) of the statutes is repealed.

**SECTION 26.** 146.78 (5) of the statutes is repealed.

**SECTION 27.** 809.105 of the statutes is created to read:

**809.105 Appeals in proceedings related to parental consent prior to performance of abortion. (1)**

**APPLICABILITY.** This section applies to the appeal of an order under s. 48.375 (7) and supersedes all inconsistent provisions of this chapter.

(2) **INITIATING AN APPEAL.** Only a minor may initiate an appeal under this section. The minor shall initiate the appeal by filing, or by a member of the clergy filing on the minor's behalf, a notice of appeal with the clerk of the trial court in which the order appealed from was entered and shall specify in the notice of appeal the order appealed from. At the same time, the minor or member of the clergy shall notify the court of appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of the court of appeals. The clerk of the trial court shall assist the minor or member of the clergy in sending a copy of the notice of appeal to the clerk of the court of appeals. The minor may use the name "Jane Doe" instead of her name on the notice of appeal and all other papers filed with the court of appeals.

(3) **PERFECTING THE APPEAL.** (a) *Fee.* No fee for docketing an appeal in the court of appeals under this section may be required of a minor or of a member of the clergy who files an appeal under this section on behalf of the minor.

(b) *Forwarding to court of appeals.* The clerk of the trial court shall forward to the court of appeals within 3 calendar days after the filing of the notice of appeal a copy of the notice of appeal and a copy of the trial court case record maintained as provided in s. 59.39 (2), using the name "Jane Doe" instead of the minor's name, and the record on appeal, assembled as provided in sub. (4).

(c) *Docketing in court of appeals.* The clerk of the court of appeals shall docket the appeal immediately upon receipt of the items specified in par. (b).

(d) *Statement on transcript.* A minor or member of the clergy may not be required to file a statement on transcript in an appeal under this section.

(4) **RECORD ON APPEAL.** The record in an appeal under this section consists of the following:

- (a) The petition.
- (b) Proof of service of the notice of hearing.
- (c) The findings of fact, conclusions of law and final order of the trial court.
- (d) Any other order made that is relevant to the appeal and the papers upon which that other order is based.
- (e) Exhibits material to the appeal, whether or not received in evidence.

(f) Any other paper or exhibit filed in the trial court that the minor requests to have included in the record.

(g) The notice of appeal.

(h) A transcript of the reporter's notes.

(i) The certificate of the clerk.

(j) If the trial court appointed a guardian ad litem under s. 48.235 (1) (d), a letter written to the court of appeals by the guardian ad litem indicating his or her position on whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of an abortion is in the minor's best interests.

(5) **TRANSCRIPT OF REPORTER'S NOTES.** At the time that a minor or member of the clergy files a notice of appeal, the minor or member of the clergy shall make arrangements with the reporter for the preparation of a transcript of the reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the transcript with the trial court within 2 calendar days after the notice of appeal is filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay the expense of transcript preparation under this subsection.

(6) **VOLUNTARY DISMISSAL.** A minor may dismiss an appeal under this section by filing a notice of dismissal in the court of appeals.

(7) **BRIEFS.** Briefs are not required to be filed in appeals under this section.

(8) **ASSIGNMENT AND ADVANCEMENT OF CASES.** The court of appeals shall take cases appealed under this section in an order that ensures that a judgment is made within 4 calendar days after the appeal has been docketed in the court of appeals. The time limit under this subsection may be extended with the consent of the minor and her counsel, if any, or the member of the clergy who initiated the appeal under this section, if any.

(8m) **ORAL ARGUMENT.** If the court of appeals determines that a case appealed under this section is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel or through the clergyman who filed the appeal under this section, if any, or on the court of appeals' own motion, by telephone, unless the minor through her counsel or the member of the clergy demands that the oral argument be held in open court.

(9) **COSTS.** The court of appeals may not assess costs against a minor or member of the clergy in an appeal under this section.

(10) **REMITTITUR.** (a) A judgment by the court of appeals under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the court of appeals reverses a trial court order denying a petition under s. 48.375 (7), the court of appeals shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the court

of appeals granting the minor's petition. If the court of appeals affirms the trial court order, it shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a copy of the order of the court of appeals denying the petition and shall also notify the minor by her counsel or the member of the clergy who initiated the appeal under this section on behalf of the minor, if any, that she may, under sub. (11), file a petition for review with the supreme court under s. 809.62. The court of appeals shall pay the expenses of service of notice under this subsection. The clerk of the court of appeals shall transmit to the trial court the judgment and opinion of the court of appeals and the record in the case filed under sub. (4), within 31 days after the date that the judgment and opinion of the court of appeals are filed. If a petition for review is filed under sub. (11), the transmittal shall be made within 31 days after the date that the supreme court rules on the petition for review.

(b) Counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall immediately, upon notification under par. (a) that the court of appeals has granted or denied the petition, notify the minor. If the court of appeals has granted the petition, counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order of the court of appeals to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the copy in the minor's medical record.

**(11) PETITION FOR REVIEW IN SUPREME COURT.** (a) Only a minor or the member of the clergy who initiated the appeal under this section, if any, may initiate a review of an appeal under this section. The petition for review of an appeal in the supreme court shall contain:

1. A statement of the issues presented for review and how the issues were decided by the trial court and court of appeals.

2. A brief statement explaining the reason for appeal to the supreme court.

3. The judgment and opinion of the court of appeals, and the findings of fact, conclusions of law and final order of the trial court that were furnished to the court of appeals. The court of appeals shall provide a copy of these papers to the minor, if any, the member of the clergy who initiated the appeal under this section, if any, her counsel or her guardian ad litem, if any, immediately upon request.

4. A copy of any other document submitted to the court of appeals under sub. (4).

(b) The supreme court shall decide whether or not to grant the petition for review and shall decide the issue on review within the time specified in par. (c).

(c) The supreme court shall, by court rule, provide for expedited appellate review of cases appealed under this subsection because time may be of the essence regarding the performance of the abortion.

(cm) If the supreme court determines that a case reviewed under this subsection is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel or through the member of the clergy who initiated the appeal under this section, if any, or on the supreme court's own motion, by telephone, unless the minor through her counsel or the member of the clergy demands that the oral argument be held in open court.

(d) A judgment or decision by the supreme court under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the supreme court reverses a court of appeals order affirming a trial court order denying a petition under s. 48.375 (7), the supreme court shall immediately so notify the minor by personal service on her counsel, if any, or on the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the supreme court granting the minor's petition. If the supreme court affirms the order of the court of appeals, it shall immediately so notify the minor by her counsel or by the member of the clergy who initiated the appeal under this section, if any. The clerk of the supreme court shall transmit to the trial court the judgment, or decision, and opinion of the supreme court and the complete record in the case within 31 days after the date that the judgment, or decision, and opinion of the supreme court are filed. The supreme court shall pay the expense of service of notice under this subsection.

(e) Counsel for the minor if any, or the member of the clergy who initiated the appeal under this section, if any, shall immediately, upon notification under par. (d) that the supreme court has granted or denied the petition, notify the minor. If the supreme court has granted the petition, counsel for the minor if any, or the member of the clergy who initiated the appeal under this section, if

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any, shall hand deliver a certified copy of the order of the supreme court to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor if any, or the member of the clergy who initiated the appeal under this section, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the order in the minor's medical record.

**(12) CONFIDENTIALITY AND ANONYMITY.** All proceedings in the court of appeals and the supreme court that are brought under this section shall be conducted in a confidential manner, and the minor may use the name "Jane Doe" instead of her name on all papers filed with either court. The identity of the minor involved and all records and other papers pertaining to an appeal shall be kept confidential, except as provided in s. 48.375 (7) (e).

**(13) CERTAIN PERSONS BARRED FROM PROCEEDINGS.** No parent, or guardian or legal custodian, if one has been appointed, or foster parent, if the minor has been placed in a foster home, and the minor's parent has signed a waiver granting the department of health and social services, a county department under s. 46.215, 46.22 or 46.23 or the foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, as defined in s. 48.375 (2) (b), of any minor who has initiated an appeal under this section may attend or intervene in any proceeding under this section.

**SECTION 28.** 809.14 (4) of the statutes is created to read:

809.14 (4) Subsection (3) does not apply in an appeal under s. 809.105.

**SECTION 29.** 809.40 (1m) of the statutes is created to read:

809.40 (1m) Subsection (1) does not apply to an appeal from an order denying a petition under s. 48.375 (7), which is governed by the procedures specified in s. 809.105.

**SECTION 30.** 809.62 (2m) of the statutes is created to read:

809.62 (2m) Subsection (2) does not apply to a petition for review of an appeal that is governed by s. 809.105. A petition governed by that section shall comply with s. 809.105 (11).

**SECTION 31.** 809.82 (2) (a) of the statutes is amended to read:

809.82 (2) (a) Except as provided in ~~par. (b)~~ this subsection, the court upon its own motion or upon good cause shown by motion, may enlarge or reduce the time prescribed by these rules or court order for doing any act, or waive or permit an act to be done after the expiration of the prescribed time.

**SECTION 32.** 809.82 (2) (c) of the statutes is created to read:

809.82 (2) (c) The court may not enlarge the time prescribed for an appeal under s. 809.105 without the consent of the minor and her counsel.

**SECTION 33.** 895.037 of the statutes is created to read:  
**895.037 Abortions on or for a minor without parental consent or judicial waiver. (1) DEFINITIONS.** In this section:

(a) "Abortion" has the meaning given in s. 48.375 (2) (a).

(c) "Emancipated minor" has the meaning given in s. 48.375 (2) (e).

(2) **PENALTIES.** (a) Any person who, in violation of s. 48.375 (4), intentionally performs or induces an abortion on or for a minor whom the person knows or has reason to know is not an emancipated minor may be required to forfeit not more than \$10,000.

(b) Any person who intentionally violates s. 48.375 (7) (e) or 809.105 (12) may be required to forfeit not more than \$10,000.

(3) **CIVIL REMEDIES.** (a) A person who intentionally violates s. 48.375 (4) is liable to the minor on or for whom the abortion was performed or induced and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion including, but not limited to, damages for personal injury and emotional and psychological distress.

(b) If a person who has been awarded damages under par. (a) proves by clear and convincing evidence that the violation of s. 48.375 (4) was wilful, wanton or reckless, that person shall also be entitled to punitive damages.

(c) A conviction under sub. (2) (a) is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this subsection.

(d) A person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action, notwithstanding s. 814.04 (1).

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this subsection limits the common law rights of parents, guardians, legal custodians and minors.

(4) **CONFIDENTIALITY.** The identity of a minor who is the subject of an action under this section and the identity of the minor's parents, guardian and legal custodian shall be kept confidential and may not be disclosed, except to

the court, the parties, their counsel, witnesses and other persons approved by the court. All papers filed in and all records of a court relating to an action under this section shall identify the minor as “Jane Doe” and shall identify her parents, guardian and legal custodian by initials only. All hearings relating to an action under this section shall be held in chambers unless the minor demands a hearing in open court and her parents, guardian or legal custodian do not object. If a public hearing is not held, only the parties, their counsel, witnesses and other persons requested by the court, or requested by a party and approved by the court, may be present.

**SECTION 34.** 977.05 (4) (i) 5. of the statutes is amended to read:

977.05 (4) (i) 5. Cases involving children subject to s. 48.18 or to adjudication as a delinquent, children filing petitions under s. 48.375 (7) and persons subject to s. 48.366.

**SECTION 35.** 977.08 (1) of the statutes is amended to read:

977.08 (1) If the representative or the authority for indigency determinations specified under s. 977.07 (1)

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refers a case to or within the office of the state public defender or if a case under s. 48.375 (7) is referred under s. 48.23 (4), the state public defender shall assign counsel according to subs. (3) and (4). If a defendant makes a request for change of attorney assignment, the change of attorney must be approved by the circuit court.

**SECTION 36.** 977.08 (2) (e) of the statutes is amended to read:

977.08 (2) (e) Cases involving children subject to s. 48.18 or to adjudication as a delinquent, children filing petitions under s. 48.375 (7) and persons subject to s. 48.366.

**SECTION 36f. Severability.** The provisions of this act, including the provisions permitting the involvement of members of the clergy in a proceeding under s. 48.375, are severable, as provided in s. 990.001 (11).

**SECTION 37. Initial applicability.** This act first applies to abortions performed or induced on the effective date of this SECTION.

**SECTION 38. Effective date.** This act takes effect on July 1, 1992.