

2009 DRAFTING REQUEST

Bill

Received: 11/21/2008

Received By: gmalaise

Wanted: Today

Companion to LRB:

For: Lena Taylor (608) 266-5810

By/Representing: Eric Peterson

May Contact:

Drafter: gmalaise

Subject: Children - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Taylor@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Guardianships of children

Instructions:

See attached--draft up work product of State Bar Children and the Law Section working group

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/25/2009	csicilia 03/25/2009		_____			
/P1			mduchek 03/25/2009	_____	cduerst 03/25/2009		
/P2	gmalaise 04/09/2009	csicilia 04/14/2009	rschluet 04/14/2009	_____	mbarman 04/14/2009		S&L
/P3	gmalaise 01/15/2010	csicilia 01/22/2010	rschluet 01/25/2010	_____	sbasford 01/25/2010		S&L

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/P4	gmalaise 03/29/2010	csicilia 03/30/2010	rschluet 03/30/2010	_____	mbarman 03/30/2010		S&L
/1	gmalaise 04/21/2010	csicilia 04/21/2010	rschluet 04/21/2010	_____	mbarman 04/21/2010	mbarman 04/21/2010	

FE Sent For: "1" @ intro. 4/22/10

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*P.A.'s
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 Sen. Taylor
 GMM*

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Handwritten notes:
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FE Sent For:

<END>

Malaise, Gordon

From: Theresa Roetter [troetter@hill-law-firm.com]
Sent: Tuesday, November 18, 2008 5:33 PM
To: HJPLUM@aol.com; Hafner, Dyann; Mike.Vruno@milwcnty.com; Jasmer, Molly
Cc: Malaise, Gordon
Subject: Juvenile Guardianship - Draft II
Attachments: Guardiaship DRAFT II.11.18.08.doc

Hi, all -

Attached (in Word format this time) is the working draft I had prepared of our juvenile guardianship law. The portions I added are in bold. I will also be forwarding to you in a separate email a draft from Gordon Malaise of the LRB. He attended our last meeting as has taken our working model and put it in this draft format. Thanks, Gordon!

I look forward to seeing you all at 2:00 p.m. tomorrow at the State Bar Center in Madison.

If you won't be able to attend, please let me know.

Thanks,

- Theresa

Atty. Theresa L. Roetter
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Madison, WI 53704
Ph: (608) 244-1354
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troetter@hill-law-firm.com
www.hill-law-firm.com

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DRAFT II
November 18, 2008

Proposed New Juvenile Guardianship Statute

§ 48.17. Guardianship of a Minor. (1) Jurisdiction. The juvenile court has exclusive jurisdiction over a child alleged to be in need of a Guardian of the Person, and who does not need protection or services that can be ordered by the court under s. 48.13.

Jurisdiction under this subsection also extends to the petition by a foreign guardian for the receipt and acceptance of a foreign guardianship of a minor as provided for in s. 54.38(1m) and, if the petition is granted, to the accepted guardianship.

(2) Venue. A petition for guardianship shall be filed either in the county of residence of the proposed ward, the county where the proposed ward is present or in the county in which the foreign ward intends to reside..

(3) Who May Petition. Any adult may petition for the appointment of a guardian of a minor. A minor age 14 or older may file a petition seeking the appointment of a guardian for their own protection and care.

(4) Contents of Petition. A petition for guardianship of the person of a minor shall be commenced by the filing of a Petition for Guardianship alleging that the minor is in need of a guardian of a type which can be ordered under subsection (5). The petition shall contain the following information:

- (a) The name and birth date of the minor;
- (b) The names and addresses of the minor's parent(s) or current guardian;
- (c) The names and addresses of the proposed guardian(s);
- (d) A statement as to why the proposed guardian(s) are fit, willing and able to assume the responsibilities of guardian of the minor;
- (e) A statement of the reason(s) the minor needs a guardian;
- (f) The type of guardianship sought;
- (g) The powers under Wis. Stat. § 48.023 which the petitioner requests to have transferred to the guardian.

(5) Types of Guardians. A guardianship petition can be granted when any of the following can be proven by clear and convincing evidence:

(a) Guardianship of the Person

- 1. Full. The parent or parents of a minor are unfit, unwilling or unable to provide care or where other compelling circumstances demonstrate that the appointment of a guardian is necessary. A person appointed full guardian of the person of a minor shall be granted physical and legal custody of the minor.

2. Limited. The parent or parents of a minor need assistance in providing for a specific need of the minor. A person appointed limited guardian of the person of a minor shall not be granted legal custody of the minor but may be granted shared physical placement with the parent(s) of the child if shared physical placement is in the minor's best interest. **The Court shall set an expiration date for the limited guardianship.**
3. Temporary. The parent or parents of a minor are unable to provide care for the minor for a defined period of time not longer than 180 days. A person appointed temporary guardian of the person of a minor shall be granted physical and legal custody of the minor for the duration of the temporary guardianship.
4. **Emergency. [Old 880.15 modified.] The welfare of a minor requires the immediate appointment of a guardian of the person on an emergency basis. An emergency guardianship shall last only so long as is necessary for the court to hear the application for either a temporary or full guardianship and in no case shall an emergency guardianship exceed sixty (60) days. The authority of the emergency guardian shall be limited to the performance of duties or acts specified by the court in the order granting the emergency guardianship. All provisions of the statutes concerning the powers and duties of a guardian shall apply to an emergency guardian except as limited by the order appointing the emergency guardian. The emergency guardian shall make the reports the court directs. The court assigned to exercise jurisdiction under ch. 48 has exclusive jurisdiction over the appointment of an emergency guardian of a minor for medical purposes but shall proceed in accordance with this section.**

(b) Guardianship of the Estate. Guardianship of the estate of a minor shall be applied for separately under the standards set forth in Chapter 54.

(6) Best Interest. The best interests of the minor shall be of paramount consideration in all cases where a guardian is sought to be appointed.

(7) Powers of the Guardian. A guardian has the right to make all custodial decisions for a minor child including the right to make all medical decisions, enroll the child in school, consent to marriage, enlistment in the military. A guardian has the right to move out of state with the minor child.

(8) Selection, Qualifications and Duties of Guardian.

- (a) The court shall take into consideration the opinions of the proposed ward and his or her family as to what is in the best interest of the proposed ward. However, the best interest of the proposed ward shall control when making the determination of who to appoint as the guardian when the wishes of the family are in conflict.
- (b) Subject to the rights of the surviving parent, a parent may by will nominate a guardian and successor guardian of the person and estate of a minor. Unless the court finds that appointing the person nominated is not in the child's best interest, the court shall appoint the person nominated by the deceased parent.
- (c) At least 96 hours before the hearing on the guardianship petition, the proposed guardian(s) shall submit to the court a sworn and notarized statement as to whether any of the following are true:
 - 1. The proposed guardian is currently charged with or has been convicted of a crime as defined in Wis. Stat. § 939.12.
 - 2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.
 - 3. Any license, certificate, permit or registration of the proposed guardian that is required under Chs. 440-480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.
 - 4. The proposed guardian is listed under Wis. Stat. § 146.40(4g)(a)2.
 - 5. The number of wards the proposed guardian is currently responsible for.
- (d) If paragraph (c) 1, 2, 3, 4 or 5 applies to the proposed guardian, he or she shall include in the sworn, notarized statement a description of the circumstances surrounding the applicable event they are disclosing.
- (e) **Co-guardians. A court may appoint more than one guardian for a minor. If the court appoints co-guardians, each decision made by a coguardian with respect to the ward must be concurred in by the coguardian or the decision is void.**

(9) Nomination of Guardian. The parent or parents of a minor may nominate a guardian for their child. A minor age 14 [or should it be 12?] and over may nominate their own guardian. The court shall consider the nomination of a guardian but shall not afford greater or lesser weight to the nomination made by either the parent(s) or the minor.

(10) Standby Guardian. A person may at any time petition for the appointment of a standby guardian for the person of a minor to assume the duty and authority of

guardianship of the person of a minor upon the death, incapacity, or debilitation and consent of the minor's parent or other legal guardian.

(11) Successor Guardian.

- (a) Appointment. If a guardian is removed by the court, or resigns and the resignation is accepted by the court, on its own motion or the motion of an interested person may appoint a competent and suitable person as successor guardian for a minor. The court may, upon request of an interested person or upon its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as the appointment of the original guardian.
- (b) Notice. If appointment under sub(a) is made without hearing, the successor guardian shall provide notice to the minor ward and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

(12) Procedure.

(a) Notice.

1. **Upon the filing of a petition for guardianship of a minor, the petitioner shall serve notice on the proposed ward, guardian, all interested parties, the guardian ad litem, and counsel for the proposed ward at least 10 days before the time set for hearing. For an emergency guardianship hearing, the notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to petition for reconsideration or modification of an emergency or temporary guardianship under s. 48. _____ within 30 days of receipt of the notice.**

Or: Upon the filing of a petition for guardianship, motion, or other pleading related to an existing guardianship, the court shall order the petitioning or moving party to serve notice on all interested parties, including a minor over the age of twelve (12) years, a parent or parents, a legal custodian, a guardian, by the methods set forth in s. 48. 273 or s. 48.42(4)???. Notice shall be in writing. A copy of the petition, motion or other required document shall be attached to the notice.

2. **Form and Delivery of Notice. A notice shall be in writing. A copy of the petition, motion, or other required document shall**

be attached to the notice. Unless otherwise provided, notice may be delivered in person, by certified mail with return receipt requested, or by facsimile transmission. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last-known address of the recipient or was sent by facsimile transmission to the last-known facsimile transmission number of the recipient. Failure of the petitioner to provide notice to all interested persons shall deprive the court of jurisdiction unless receipt of notice is waived by the interested person.

- (b) **Appointment of a guardian ad litem.** The court shall appoint a guardian ad litem for a minor when a petition for any type of guardianship is filed. The appointment of a guardian ad litem in an emergency petition shall be done as soon as possible after filing, but is not required prior to the issuance of an emergency guardianship if the court finds that the existing circumstances require immediate action. The guardian ad litem shall meet all the requirements and conduct all of the duties set forth in s. 48.235.
- (c) **Hearing.**
 - 1. **Timing.** The initial hearing on the appointment of a guardian of the person of a minor shall be held within thirty (30) days of the filing of the petition unless the hearing is for a temporary guardianship then the court can hearing the matter...on a shorter time frame provided notice is given....
 - 2. **Attendance.** The proposed ward is not required to attend the hearing but, if over 12 or 14? and nominating a guardian, shall provide information to the guardian ad litem sufficient for the guardian ad litem to advise the court of the reasons for the nomination.
- (d) **Findings.** A court shall make findings regarding the need for a guardian, the person or persons appointed to act as guardian, the powers specifically granted to the guardian, and the length of the guardianship.
- (e) **Orders.** If the proposed ward is found in need of a guardian and the court finds that appointment of a guardian of the person of a minor is in the proposed ward's best interest, the court may enter a determination and order appointing a guardian that specifies any powers and duties of the guardian and may provide for coguardians, payment of fees and costs, termination date of the guardianship.

- (f) **Letters of Guardianship.** Upon the appointment of a guardian of the person of a minor the court shall issue letters of guardianship under the seal of the court to the guardian of the person of the minor.

(13) Review of the Conduct of a Guardian.

- (a) Continuing Jurisdiction. The court that appointed the guardian or that granted a petition for acceptance and receipt of a foreign guardianship has continuing jurisdiction over the guardian.
- (b) Cause for Court Action. Any of the following, if committed by a guardian with respect to a ward, constitutes cause for a remedy of the court under sub(d):
1. Abusing or neglecting the ward or knowingly permitting others to do so.
 2. Engaging in self-dealing.
 3. Failing to adequately provide for the personal needs of the ward.
 4. Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met.
 5. Failing to act in the best interest of the ward.
 6. Failing to disclosed conviction for a crime that would have prevented appointment of the person as guardian.
- (c) Procedure.
- (d) Remedies.

(14) General Duties and Powers of Guardian. A ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or court order. A guardian may be granted only those powers necessary to provide for the personal needs of the ward. **[We can do better...]**

(15) Fees and Costs. [payment of GAL, etc., etc.]

(16) Termination of a Guardianship.

- (a) At any time, a parent of a child may file a petition seeking to terminate the guardianship. A petition filed under this section shall allege facts sufficient to show all of the following:
1. The facts upon which the guardianship was granted have been remedied; and

2. The parent is fit, willing and able to take on the responsibilities of a guardian; and
 3. It is in the best interest of the child that the guardianship order be terminated.
- (b) Guardianship of the person may also be terminated under the following circumstances without a petition for termination:
1. The marriage of the minor;
 2. The minor reaches 18 years of age;
 3. The guardianship order sets forth a date for expiration of the guardianship.
- (c) The court shall hold a hearing on a petition to terminate the guardianship unless written waivers of objection to the termination petition are signed by all parties and the guardian ad litem and the court approves the waivers.
- (d) If a hearing is held, the court shall terminate the guardianship if the court finds that it has been proven by clear and convincing evidence that the facts upon which the guardianship was granted have been remedied, the parent is fit, willing and able to assume the responsibilities of a guardian and it is in the best interest of the child that the guardianship order be terminated.

(17) Residual Parental Rights. The parent by birth, adjudication, or adoption retains those legal rights, interests or benefits that survive a transfer of legal custody under a guardianship order. Those residual rights include but are not limited to: right of inheritance to or from the child, insurance benefits if the child is designated as beneficiary or if intestacy provisions apply, social security benefits for or from the child, veteran benefits for or from the child, and any other legal rights, interest or benefits that accrue as a result of the parent/child relationship, right to petition the court for visitation with the child and right to notice of legal proceedings affecting the rights of the child.

(18) Emancipation of Married Minors. Except for a minor found to be incompetent, upon marriage, a minor is no longer a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward.

(19) Visitation by a minor's grandparents and stepparent. [put 54.56 in here as it now reads?]



State of Wisconsin
2009 - 2010 LEGISLATURE

In 3/23
copy

LRB-0893/1
GMM:.....
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

Gen Cat

1 AN ACT...; relating to: guardianships of children.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be supplied when the draft is ready for introduction.

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

2 SECTION 1. 48.02 (8) of the statutes is amended to read:

3 48.02 (8) "Guardian" means the person named by the court having the duty and
4 authority of guardianship guardian of the person of a child.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69; 2005 a. 113, 232, 277, 344; 2005 a. 443 s. 265; 2007 a. 20.

5 SECTION 2. 48.023 (intro.) of the statutes is amended to read:

6 **48.023 Guardianship.** (intro.) Except as limited by an order of the court
7 under s. 48.976 (2) (c) 2., 48.977 (5) (b), or 48.978 (6) (b) 2., a person appointed by the
8 court to be the guardian of a child under this chapter has the duty and authority to
9 make important decisions in matters having a permanent effect on the life and

1 development of the child and the duty to be concerned about the child's general
2 welfare, including ~~but not limited to~~ all of the following:

3 **SECTION 3.** 48.023 (3) of the statutes is amended to read:

4 48.023 (3) The right and duty of reasonable visitation of with the child and,
5 subject to an order under s. 48.355 (3) (b), 48.42 (1m) (e), 48.428 (6), 48.976 (11) or
6 (12), 48.925 (1m), 767.43 (6), 767.44 (1), or 938.355 (3) (b), to determine visitation
7 with the child.

8 **History:** 1977 c. 354; 1993 a. 385; 1995 a. 27, 77, 275, 352; 1997 a. 334.

8 **SECTION 4.** 48.023 (4) of the statutes is amended to read:

9 48.023 (4) The rights and responsibilities of physical custody and legal custody,
10 including the right to change the residence of the child from this state to another
11 state, except when physical custody or legal custody has been vested in another
12 person or when the child is under the supervision of the department of corrections
13 under s. 938.183, 938.34 (4h), (4m) or (4n), or 938.357 (4) or the supervision of a
14 county department under s. 938.34 (4d) or (4n).

15 **History:** 1977 c. 354; 1993 a. 385; 1995 a. 27, 77, 275, 352; 1997 a. 334.

15 **SECTION 5.** 48.09 (5) of the statutes is amended to read:

16 48.09 (5) By the district attorney or, if designated by the county board of
17 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,
18 48.976, or 48.977. If the county board transfers this authority to or from the district
19 attorney on or after May 11, 1990, the board may do so only if the action is effective
20 on September 1 of an odd-numbered year and the board notifies the department of
21 administration of that change by January 1 of that odd-numbered year.

History: 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 246; 1995 a. 77, 275; 1997 a. 292.

History: 1977 c. 354; 1993 a. 385; 1995 a. 27, 77, 275, 352; 1997 a. 334.

22 **SECTION 6.** 48.14 (2) (b) of the statutes is amended to read:

1 48.14 (2) (b) The appointment and removal of a guardian of the person for a
2 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977,
3 and 48.978 ~~and ch. 54~~ and for a child found to be in need of protection or services
4 under s. 48.13 because the child is without parent or guardian.

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334; 2005 a. 387.

5 **SECTION 7.** 48.14 (2m) of the statutes is created to read:

6 48.14 (2m) The receipt and acceptance of a foreign guardianship, except as
7 provided in s. 48.976 (6) (d), and, if the foreign guardianship is received and accepted,
8 over the accepted guardianship.

9 **SECTION 8.** 48.14 (11) of the statutes is amended to read: /

10 48.14 (11) Granting visitation privileges under s. ~~54.56~~ 48.976 (11).

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334; 2005 a. 387.

11 **SECTION 9.** 48.185 (1) of the statutes is amended to read:

12 48.185 (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.133,
13 48.135 ~~and, or~~ 48.14 (1) to (9) or (11) may be in ~~any of the following~~: the county where
14 the child or the expectant mother of the unborn child resides or the county where the
15 child or expectant mother is present. Venue for proceedings brought under subch.
16 VIII is as provided in this subsection except where the child has been placed and is
17 living outside the home of the child's parent pursuant to a dispositional order, in
18 which case venue is as provided in sub. (2). Venue for a proceeding under s. 48.14
19 (2m) is as provided in this subsection or may be in the county where the foreign
20 guardian intends the foreign ward to reside. Venue for a proceeding under s. 48.14
21 (10) is as provided in s. 801.50 (5s).

History: 1977 c. 354; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491; 1995 a. 77, 275; 1997 a. 80, 292.

22 **SECTION 10.** 48.235 (1) (c) of the statutes is amended to read:

1 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is
2 the subject of a proceeding to terminate parental rights, whether voluntary or
3 involuntary, for a child who is the subject of a contested adoption proceeding, and for
4 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395; 1995 a. 27, 275; 1997 a. 237, 292, 334; 1999 a. 149; 2005 a. 293; 2005 a. 443 s. 265; 2007 a. 20.

5 **SECTION 11.** 48.235 (3) (c) of the statutes is created to read:

6 48.235 (3) (c) In addition to any other duties and responsibilities required of
7 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of
8 a proceeding under s. 48.976 shall do all of the following unless granted leave by the
9 court not to do so:

10 1. Personally, or through a trained designee, meet with the child and, if the
11 child is old enough to communicate, interview the child, explain the contents of the
12 petition and the applicable hearing procedure to the child, and advise the child of the
13 child's rights to counsel, to be present at the hearing, to a jury trial, and to an appeal.

14 2. Interview the proposed guardian, notify the proposed guardian of the right
15 to be present at and to participate in the hearing and to present and cross-examine
16 witnesses, notify the proposed guardian of his or her duty to submit the statement
17 under s. 48.976 (3) (c), and report to the court concerning the suitability of the
18 proposed guardian to serve as guardian.

19 3. Attend all court proceedings related to the guardianship, present evidence
20 concerning the best interests of the child, if necessary, and make clear and specific
21 recommendations to the court concerning the best interest^s of the child at every stage
22 of the proceeding.

23 4. Report to the court on any matter that the court requests.

24 **SECTION 12.** 48.299 (4) (a) of the statutes is amended to read:

1 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at
2 the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978
3 (2) (e) and (3) (f) 2.

History: 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; 1997 a. 35, 252, 292, 334; 1999 a. 32, 149; 2005 a. 443 s. 265.

4 **SECTION 13.** 48.299 (4) (b) of the statutes is amended to read:

5 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor
6 statutory rules of evidence are binding at a hearing for a child held in custody under
7 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a
8 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing
9 about changes in placement, revision of dispositional orders, extension of
10 dispositional orders or termination of guardianship orders entered under s. 48.976,
11 48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall
12 admit all testimony having reasonable probative value, but shall exclude
13 immaterial, irrelevant or unduly repetitious testimony or evidence that is
14 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has
15 demonstrable circumstantial guarantees of trustworthiness. The court shall give
16 effect to the rules of privilege recognized by law. The court shall apply the basic
17 principles of relevancy, materiality and probative value to proof of all questions of
18 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may
19 be made and shall be noted in the record.

History: 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; 1997 a. 35, 252, 292, 334; 1999 a. 32, 149; 2005 a. 443 s. 265.

20 **SECTION 14.** 48.345 (intro.) of the statutes is amended to read:

21 **48.345 Disposition of child or unborn child of child expectant mother**
22 **adjudged in need of protection or services.** (intro.) If the judge finds that the
23 child is in need of protection or services or that the unborn child of a child expectant

1 mother is in need of protection or services, the judge shall enter an order deciding one
 2 or more of the dispositions of the case as provided in this section under a care and
 3 treatment plan, except that the order may not place any child not specifically found
 4 under this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled,
 5 mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that
 6 exclusively ~~treat~~ treats those categories of children, and the court may not place any
 7 child expectant mother of an unborn child in need of protection or services outside
 8 of the child expectant mother's home unless the court finds that the child expectant
 9 mother is refusing or has refused to accept any alcohol or other drug abuse services
 10 offered to her or is not making or has not made a good faith effort to participate in
 11 any alcohol or other drug abuse services offered to her. The dispositions under this
 12 section are as follows:

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149; 2001 a. 59, 69; 2005 a. 25, 387.

13 **SECTION 15.** 48.368 (1) of the statutes is amended to read:

14 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41
 15 or 48.415 or an appeal from a judgment terminating or denying termination of
 16 parental rights is filed during the year in which a dispositional order under s. 48.355,
 17 an extension order under s. 48.365, a voluntary agreement for placement of the child
 18 under s. 48.63, or a guardianship order under ch. 54, 2007 stats., or ch. 880, 2003
 19 stats., or s. 48.976 or 48.977 ~~or ch. 54~~ is in effect, the dispositional or extension order,
 20 voluntary agreement, or guardianship order shall remain in effect until all
 21 proceedings related to the filing of the petition or an appeal are concluded.

History: 1989 a. 86; 1993 a. 446; Stats. 1993 s. 48.368; 1995 a. 275; 1997 a. 80; 2005 a. 293; 2007 a. 45.

22 **SECTION 16.** 48.62 (2) of the statutes is amended to read:

23 48.62 (2) A relative ~~or~~ or a guardian of a child who provides care and
 24 maintenance for the child is not required to obtain the license specified in this
 ↑ strike both commas

1 section. The department, county department, or licensed child welfare agency as
2 provided in s. 48.75 may issue a license to operate a foster home or a treatment foster
3 home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests
4 a license to operate a foster home or treatment foster home for a specific child who
5 is either placed by court order or who is the subject of a voluntary placement
6 agreement under s. 48.63. The department, a county department, or a licensed child
7 welfare agency may, at the request of a guardian appointed under s. 48.976, 48.977,
8 or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the guardian's home as
9 a foster home or treatment foster home for the guardian's minor ward who is living
10 in the home and who is placed in the home by court order. Relatives with no duty of
11 support and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007
12 stats., or ch. 880, 2003 stats., who are licensed to operate foster homes or treatment
13 foster homes are subject to the department's licensing rules.

NOTE: NOTE: Sub. (2) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed commas were inserted by 2005 Wis. Act 387, but rendered surplusage by 2005 Wis. Act 232. Corrective legislation is pending. NOTE:

History: 1977 c. 354 s. 101; 1977 c. 418, 447; 1981 c. 20; 1985 a. 29 s. 3202 (23); 1985 a. 176, 281, 332, 403; 1989 a. 31, 336; 1993 a. 395 ss. 31m, 39; 1993 a. 437 s. 67; 1993 a. 446 ss. 79 to 82, 134m; 1993 a. 491; 1995 a. 275; 1997 a. 27, 334; 1999 a. 9; 2001 a. 69; 2005 a. 25, 232, 387; 2007 a. 20 ss. 810, 1322, 1323; s. 13.93 (2) (c).

14 **SECTION 17.** 48.831 (1) of the statutes is amended to read:

15 **48.831 (1) TYPE OF GUARDIANSHIP.** This section may be used for the appointment
16 of a guardian of a child who does not have a living parent if a finding as to the
17 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~
18 s. 48.976 applies to the appointment of a guardian for a child who does not have a
19 living parent for all other purposes. An appointment of a guardian of the estate of
20 a child who does not have a living parent shall be conducted in accordance with the
21 procedures specified in ch. 54.

History: 1989 a. 161; 1995 a. 73, 275; 1997 a. 27, 334; 2005 a. 387.

22 **SECTION 18.** 48.831 (1m) (e) of the statutes is amended to read:

1 48.831 (1m) (e) A guardian appointed under s. 48.976, ch. 54, 2007 stats., or
2 ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court
3 under s. 46.986 (10), 54.54 (1), 2007 stats., or s. 880.17 (1), 2003 stats.

4 History: 1989 a. 161; 1995 a. 73, 275; 1997 a. 27, 334; 2005 a. 387.

4 **SECTION 19.** 48.976 of the statutes is created to read:

5 **48.976 Appointment of guardian of the person of a child. (1)**

6 DEFINITIONS In this section:

7 (a) "Interested person" means any of the following:

8 1. For purposes of a petition for guardianship, any of the following:

9 a. The proposed ward, if he or she has attained 12 years of age.

10 b. The parents of the proposed ward.

11 c. Any individual who is nominated as guardian and any individual who is
12 appointed to act as guardian or fiduciary for the proposed ward by a court of any
13 state.

14 d. The individual who has exercised principal responsibility for the care and
15 custody of the proposed ward during the period of 60 consecutive days immediately
16 before the filing of the petition.

17 e. If the proposed ward has no living parent, any individual nominated to act
18 as fiduciary for the proposed ward in a will or other written instrument that was
19 executed by a parent of the proposed ward.

20 f. If the proposed ward is receiving any public services or benefits, the county
21 department or, in a county having a population of 500,000 or more, the department
22 that is providing the services or benefits.

23 g. The person representing the interests of the public under s. 48.09 of the
24 county in which the petition is filed and, if the petition is filed in a county other than

1 the county of the proposed ward's residence, the person representing the interests
2 of the public of the county of the proposed ward's residence. ✓

3 h. Any other person that the court may require.

4 2. For purposes of proceedings subsequent to an order for guardianship, any
5 of the following:

6 a. The guardian.

7 b. The parents of the ward.

8 c. The county of venue, through the person representing the interests of the
9 public under s. 48.09, if the county has an interest.

10 d. Any other individual that the court may require.

11 (b) "Proposed ward" means a child for whom a petition for guardianship is filed.

12 ✓ (c) "Standby guardian" means an individual designated by the court under sub.
13 (7) whose appointment as guardian becomes effective immediately upon the death,
14 unwillingness or inability to act, resignation, or removal by the court of the initially
15 appointed guardian, or if the initially appointed guardian is temporarily unable to
16 fulfill his or her duties.

17 (d) "Successor guardian" means an individual appointed under sub. (8). ✓

18 (e) "Ward" means an individual for whom a guardian has been appointed.

19 **(2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY; IMMUNITY. (a) *Appointment.***

20 1. Except as provided in ss. 48.831, 48.977, and 48.978, this section may be used for
21 the appointment of a guardian of the person for a child and for the receipt and
22 acceptance of a foreign guardianship of the person of a child. An appointment of a
23 guardian of the estate of a child shall be conducted under the procedures specified
24 in ch. 54. ✓

1 2. The court may appoint coguardians of the person for a child under this
2 section, subject to any conditions that the court imposes. If coguardians are
3 appointed, any decision concerning the child must be concurred in by all coguardians
4 or is void.

5 (b) *Nomination by parent or child.* 1. A parent may nominate a guardian and
6 successor guardian for any of his or her children who is in need of guardianship,
7 including a nomination by will. Subject to the rights of a surviving parent, the court
8 shall appoint the person nominated as guardian or successor guardian, unless the
9 court finds that appointment of the person nominated is not in the child's best
10 interests.

child

11 2. A child who is 12 years of age or over may nominate his or her own guardian,
12 but if the minor is in the armed service or is outside of the state or if other good reason
13 exists, the court may dispense with the child's right of nomination. If neither parent
14 of a child who is 12 years of age or over is fit, willing, and able to be appointed
15 guardian, the court may appoint the nominee of the child.

16 3. In determining who is appointed as guardian, the court shall consider the
17 nominations of the parents and the proposed ward and the opinions of the members
18 of the proposed ward's family as to what is in the best interests of the proposed ward,
19 but the best interests of the proposed ward as determined by the court shall control
20 in making the determination when those nominations and opinions are in conflict
21 with those best interests.

fix

22 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.
23 5., a guardian appointed under sub. (3) (f) 2. shall have all of the duties and authority
24 specified in s. 48.023, unless those duties and that authority are limited under subd.
25 2.

fix

1 2. 'Limited guardianship.' The court may order that the duties and authority
 2 of a guardian appointed under sub. (3) (f) 2. be limited. The duties and authority of
 3 a limited guardian shall be as specified by the order of appointment under sub. (3)
 4 (f) 2. The duties and authority of a full guardian shall apply to a limited guardian
 5 to the extent relevant to the duties or authority of the limited guardian, except as
 6 limited by the order of appointment. The court may limit the authority of guardian
 7 with respect to any power to allow the parent to retain such power to make decisions
 8 as is within the parent's ability to exercise effectively and may limit the physical
 9 custody of a guardian to allow shared physical custody with the parent if shared
 10 physical custody is in the best interests of the child. The court shall set an expiration
 11 date for a limited guardianship order, which may be extended for good cause shown.

fix

12 3. 'Temporary guardianship.' If it is demonstrated to the court that a proposed
 13 ward's particular situation, including the inability of the child's parent to provide for
 14 the care, custody, and control of the child for a temporary period of time, requires the
 15 appointment of a temporary guardian, the court may appoint a temporary guardian
 16 as provided under sub. (4).

fix

17 4, 'Emergency guardianship.' If it is demonstrated to the court that the welfare
 18 of a proposed ward requires the immediate appointment of an emergency guardian,
 19 the court may appoint an emergency guardian as provided under sub. (5).

fix

20 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the
 21 parent as a result of the parent-child relationship that are not assigned to the
 22 guardian or otherwise limited by statute. A guardian acting on behalf of a ward may
 23 exercise only those powers that the guardian is authorized to exercise by statute or
 24 court order. The court may authorize a guardian to exercise only those powers that

1 are necessary to provide for the care, custody, and control of the ward and to exercise
2 those powers in a manner that is appropriate to the ward.

3 (d) *Immunity*. A guardian of a child is immune from civil liability for his or her
4 acts or omissions in performing the duties of the guardianship if he or she performs
5 the duties in good faith, in the best interests of the ward, and with the degree of
6 diligence and prudence that an ordinarily prudent person exercises in his or her own
7 affairs.

8 (3) PROCEDURES. (a) *Petition*. Any person, including a child 12 years of age or
9 over on his or her own behalf, may petition for the appointment of a guardian for a
10 child. A petition for guardianship may include an application for protective
11 placement or protective services or both under ch. 55. The petition shall be entitled
12 "In the interest of ... (child's name), a person under the age of 18" and shall state all
13 of the following, if known to the petitioner:

14 1. The name, date of birth, and address of the child.

15 2. The names and addresses of the child's parents, current guardian and legal
16 custodian, if any, proposed guardian, and all other interested persons.

17 3. A statement whether the petitioner is requesting a full guardianship or a
18 limited guardianship.

19 4. If the petitioner is requesting a full guardianship, a statement of the facts
20 and circumstances establishing that the child's parent or current guardian is unfit,
21 unwilling, or unable to provide for the care, custody, and control of the child or of
22 other compelling facts and circumstances demonstrating that a full guardianship is
23 necessary.

24 5. If the petitioner is requesting a limited guardianship, a statement of the facts
25 and circumstances establishing that the child's parent or current guardian needs

1 assistance in providing for the care, custody, and control of the child and a statement
2 of the specific duties and authority under s. 48.023 sought by the petitioner for the
3 proposed guardian and the specific parental rights and duties that the petitioner
4 seeks to have transferred.

5 6. A statement of the facts and circumstances establishing that the proposed
6 guardian is fit, willing, and able to serve as the child's guardian.

7 7. A statement of whether the proceedings are subject to the Uniform Child
8 Custody Jurisdiction and Enforcement Act under ch. 822. ✓

9 8. A statement of whether the child may be subject to the federal Indian Child
10 Welfare Act, 25 USC 1901 to 1963. ✓

11 9. Whether the petitioner is aware of any guardianship or other related
12 proceeding involving the child that is pending in another state or county and, if so,
13 the details of the guardianship or related proceeding.

14 (b) *Service of petition and notice.* 1. The petitioner shall cause the petition and
15 notice of the time and place of the hearing under par. (d) to be served at least 10 days
16 before the time of the hearing upon all of the following persons:

17 a. The child if the child is 12 years of age or over, the child's guardian ad litem,
18 and the child's counsel.

19 b. The child's parents and current guardian, legal custodian, and physical
20 custodian.

21 c. The proposed guardian.

22 d. All other interested persons, unless specifically waived by the court.

23 e. Any other person that the court may require.

24 2. A notice shall be in writing. A copy of the petition and any other required
25 document shall be attached to the notice. Unless otherwise provided, notice shall be

1 delivered in person or by certified mail with return receipt requested. Notice is
2 considered to be given by proof of personal delivery or by proof that the notice was
3 mailed to the last-known address of the recipient. Failure of the petitioner to provide
4 notice to all interested persons shall deprive the court of jurisdiction unless receipt
5 of notice is waived by the interested person or by the court under subd. 1. d. ✓

6 (c) *Statement of acts by proposed guardian.* 1. At least 96 hours before the
7 hearing under par. (d), the proposed guardian shall submit to the court a sworn and
8 notarized statement as to the number of person^s for whom the proposed guardian is
9 responsible, whether as a parent, guardian, or legal custodian, and as to whether any
10 of the following is true:

11 a. The proposed guardian is currently charged with or has been convicted of a
12 crime.

13 b. The proposed guardian has filed for or received protection under the federal
14 bankruptcy laws.

15 c. Any license, certificate, permit, or registration of the proposed guardian that
16 is required under chs. 440 to 480 or by the laws of another state for the practice of
17 a profession or occupation has been suspended or revoked. ✓

18 d. The proposed guardian is listed under s. 146.40 (4g) (a) 2. ✓

19 2. If subd. 1. a. to d. applies to the proposed guardian, he or she shall include
20 in the sworn and notarized statement a description of the circumstances
21 surrounding the applicable event under subd. 1. a. to d.

22 (d) *Hearing.* 1. The initial hearing on a petition for guardianship, other than
23 a petition for temporary guardianship under sub. (4) or for emergency guardianship
24 under sub. (5), shall be heard within 30 days after the filing of the petition. At the
25 hearing the court shall first determine whether any party wishes to contest the

1 petition. If the petition is not contested, the court shall grant the disposition under
2 par. (f) 2. If the petition is contested, the court shall set a date for a fact-finding and
3 dispositional hearing that allows reasonable time for the parties to prepare but is not
4 more than 30 days after the initial hearing. At the fact-finding and dispositional
5 hearing, the court shall hear evidence and argument relating to the allegations in
6 the petition. If after hearing that evidence and those arguments the court
7 determines that the allegations in the petition are proved by clear and convincing
8 evidence and that appointment of the proposed guardian as the child's guardian is
9 in the best interests of the child, the court shall grant the disposition under par. (f) ✓
10 2. If after hearing that evidence and those arguments the court determines that the
11 allegations in the petition are not proved by clear and convincing evidence or that
12 appointment of the proposed guardian as the child's guardian is not in the best
13 interests of the child, the court shall dismiss the petition under par. (f) 1. ✓

14 2. The proposed guardian and any proposed standby guardian shall be
15 physically present at the hearing unless the court excuses the attendance of either
16 or, for good cause shown, permits attendance by telephone. The child is not required
17 to attend the hearing, but if the child has nominated the proposed guardian, the child
18 shall provide to his or her guardian ad litem sufficient information for the guardian
19 ad litem to advise the court whether the nomination is in the best interests of the
20 child. An interested person may participate in the hearing on the petition at the
21 court's discretion.

22 (e) *Dispositional factors.* In determining the appropriate disposition under this
23 section, the court shall consider all of the following:

24 1. Any nominations made under sub. (2) (b) 1. or 2. and the opinions of the
25 proposed ward and the members of his or her family as to what is in the best interests

1 of the proposed ward, but the best interests of the proposed ward as determined by
2 the court shall control in making the determination when those nominations and
3 opinions are in conflict with those best interest^s.

4 2. Whether the proposed guardian would be fit, willing, and able to serve as the
5 guardian of the child.

6 3. Whether appointment of the proposed guardian as the child's guardian is in
7 the best interests of the child

8 (f) *Disposition.* At the conclusion of the hearing under par. (d), the court shall
9 grant one of the following dispositions:

10 1. A disposition dismissing the petition if the court determines that the
11 allegations in the petition have not been proved by clear and convincing evidence or
12 that appointment of the proposed guardian as the child's guardian is not in the best
13 interests of the child.

14 2. A disposition ordering that the proposed guardian be appointed as the child's
15 full guardian under sub. (2) (c) 1. or limited guardian under sub. (2) (c) 2., if the court
16 determines that the allegations in the petition have been proved by clear and
17 convincing evidence and that such an appointment is in the best interests of the
18 child. If the court orders the proposed guardian to be appointed as the child's
19 guardian, the court shall issue letters of guardianship under the seal of the court to
20 the guardian.

21 (4) TEMPORARY GUARDIANSHIPS. (a) *Standard.* If it is demonstrated to the court
22 that a proposed ward's particular situation, including the inability of the child's
23 parent to provide for the care, custody, and control of the child for a temporary period
24 of time, requires the appointment of a temporary guardian, the court may appoint
25 a temporary guardian under this subsection.

1 (b) *Duration and extent of authority.* The court may appoint a temporary
2 guardian for a child for a period not to exceed 180 days. The court may impose no
3 further temporary guardianship on the ward for at least 90 days after the expiration
4 of the temporary guardianship. The court's determination and order appointing the
5 temporary guardian shall specify the authority of the temporary guardian and shall
6 be limited to those acts that are reasonably related to the reasons for appointment
7 that are specified in the petition for temporary guardianship. The authority of the
8 temporary guardian is limited to the performance of those acts stated in the order
9 of appointment.

10 (c) *Procedures for appointment.* All of the following procedures apply to the
11 appointment of a temporary guardian:

12 1. Any person may petition for the appointment of a temporary guardian for
13 a child. The petition shall contain the information required under sub. (3) (a), shall
14 specify the reasons for the appointment of a temporary guardian and the powers
15 requested for the temporary guardian, and shall include a petition for appointment
16 of a permanent guardian for the child or state why such a guardianship is not sought.

17 2. The petitioner shall give notice of the petition to the persons specified in sub.
18 (3) (b). The notice shall be served before or at the time the petition is filed or as soon
19 after the filing of the petition as possible and shall include notice of the right to
20 counsel and of the right to petition for reconsideration or modification of the
21 temporary guardianship at any time under subd. 5. The petitioner shall serve notice
22 of the order for hearing on the persons specified in sub. (3) (b) before the hearing or
23 not later than 3 calendar days after the hearing. If the petitioner serves notice after
24 the hearing is conducted and the court has entered an order, the petitioner shall
25 include the court's order with the notice of the order for hearing.

1 3. The court shall appoint a guardian ad litem, who shall attempt to meet with
2 the proposed ward before the hearing or as soon as is practicable after the hearing,
3 but not later than 7 calendar days after the hearing. The guardian ad litem shall
4 report to the court on the advisability of the temporary guardianship at the hearing
5 or not later than 10 calendar days after the hearing.

6 4. The court shall hold a hearing on the temporary guardianship. The hearing
7 may be held no earlier than 48 hours after the filing of the petition unless good cause
8 is shown. The guardian ad litem shall attend the hearing in person or by telephone
9 or shall provide to the court a written report concerning the proposed ward for review
10 at the hearing.

11 5. If the court appoints a temporary guardian and if the ward, his or her
12 counsel, the guardian ad litem, or an interested person requests, the court shall order
13 a rehearing on the issue of appointment of the temporary guardian within 30
14 calendar days after the request.

15 (d) *Cessation of powers.* The duties and powers of the temporary guardian cease
16 upon the issuing of letters of permanent guardianship, the expiration of the time
17 period specified in par. (b), or the termination as determined by the court of the
18 situation of the ward that was the cause of the temporary guardianship. Upon
19 cessation of a temporary guardianship, the temporary guardian shall file with the
20 court any report that the court requires. Any action that has been commenced by the
21 temporary guardian may be prosecuted to final judgment by the successor or
22 successors in interest, if any.

23 (5) EMERGENCY GUARDIANSHIPS. (a) *Standard.* If it is demonstrated to the court
24 that the welfare of a proposed ward requires the appointment of an emergency
25 guardian, the court may appoint an emergency guardian under this subsection.

1 (b) *Duration and extent of authority.* The court may appoint an emergency
2 guardian for a child for a period not to exceed 60 days. The court's determination and
3 order appointing the emergency guardian shall specify the authority of the
4 emergency guardian and shall be limited to those acts that are reasonably related
5 to the reasons for appointment that are specified in the petition for emergency
6 guardianship. The authority of the emergency guardian is limited to the
7 performance of those acts stated in the order of appointment.

8 (c) *Procedures for appointment.* All of the following procedures apply to the
9 appointment of an emergency guardian:

10 1. Any person may petition for the appointment of an emergency guardian for
11 a child. The petition shall contain the information required under sub. (3) (a), shall
12 specify the reasons for the appointment of an emergency guardian and the powers
13 requested for the emergency guardian, and shall include a petition for appointment
14 of a temporary or permanent guardian for the child or state why such a guardianship
15 is not sought.

16 2. The petitioner shall give notice of the petition to the persons specified in sub.
17 (3) (b). The notice shall be served before or at the time the petition is filed or as soon
18 after the filing of the petition as possible and shall include notice of the right to
19 counsel and of the right to petition for reconsideration or modification of the
20 emergency guardianship at any time under subd. 5. The petitioner shall serve notice
21 of the order for hearing on the persons specified in sub. (3) (b) before the hearing or
22 not later than 3 calendar days after the hearing. If the petitioner serves notice after
23 the hearing is conducted and the court has entered an order, the petitioner shall
24 include the court's order with the notice of the order for hearing.

1 3. The court shall appoint a guardian ad litem as soon as possible after the filing
2 of the petition. The court shall attempt to appoint the guardian ad litem before the
3 hearing on the petition, but may appoint the guardian ad litem after the hearing if
4 the court finds that exigent circumstances require the immediate appointment of an
5 emergency guardian. The guardian ad litem shall attempt to meet with the proposed
6 ward before the hearing or as soon as is practicable after the hearing, but not later
7 than 7 calendar days after the hearing. The guardian ad litem shall report to the
8 court on the advisability of the temporary guardianship at the hearing or not later
9 than 10 calendar days after the hearing.

10 4. The court shall hold a hearing on the temporary guardianship as soon as
11 possible after the filing of the petition. If appointed prior to the hearing, the guardian
12 ad litem shall attend the hearing in person or by telephone or shall provide to the
13 court a written report concerning the proposed ward for review at the hearing.

14 5. If the court appoints an emergency guardian and if the ward, his or her
15 counsel, the guardian ad litem, or an interested person requests, the court shall order
16 a rehearing on the issue of appointment of the emergency guardian within 30
17 calendar days after the request.

18 (d) *Cessation of powers.* The duties and powers of the emergency guardian
19 cease upon the issuing of letters of temporary or permanent guardianship, the
20 expiration of the time period specified in par. (b), or the termination as determined
21 by the court of the situation of the ward that was the cause of the emergency
22 guardianship. Upon cessation of an emergency guardianship, the emergency
23 guardian shall file with the court any report that the court requires. Any action that
24 has been commenced by the emergency guardian may be prosecuted to final
25 judgment by the successor or successors in interest, if any.



1 (6) RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) *Definitions*. In this
2 subsection:

3 1. "Foreign court" means a court of a foreign state having competent
4 jurisdiction of a foreign ward.

5 2. "Foreign guardian" means a guardian appointed by a foreign court for a
6 foreign ward.

7 3. "Foreign guardianship" means a guardianship issued by a foreign court.

8 4. "Foreign state" means a state other than this state.

9 5. "Foreign ward" means a child who is subject to a guardianship order or
10 related order in a foreign state.

11 (b) *Petition*. A petition for the receipt and acceptance by this state of a foreign
12 guardianship of a foreign ward who resides in this state or whose foreign guardian
13 intends to become a resident of this state may include other petitions related to the
14 foreign guardianship, such as a petition to modify the terms of the foreign
15 guardianship, and shall include all of the following:

16 1. A certified copy of the foreign guardianship order that includes all
17 attachments that describe the duties and powers of the foreign guardian and all
18 amendments or modifications to the foreign guardianship order that were entered
19 after issuance of the original foreign guardianship order, including any order to
20 transfer the foreign guardianship.

21 2. The address of the foreign court that issued the foreign guardianship order.

22 3. A listing of any other guardianship petitions for the foreign ward that are
23 pending or that have been filed in any jurisdiction at any time within 24 months
24 before the filing of the petition under this paragraph and the names and addresses
25 of the courts in which the petitions have been filed.

1 4. The petitioner's name, residence, current address, and any relationship of
2 the petitioner to the foreign ward other than as foreign guardian.

3 5. The name, date of birth, principal residence, and current address of the
4 foreign ward.

5 6. The names and addresses of the foreign ward's parents.

6 7. The name and address of any person other than the foreign guardian who
7 is responsible for the care or custody of the foreign ward.

8 8. The name and address of any legal counsel of the foreign ward, including any
9 guardian ad litem appointed by the foreign court.

10 9. The reason for the transfer of the foreign guardianship.

11 (c) *Notice of petition.* Notice of a petition for receipt and acceptance of a foreign
12 guardianship shall be delivered in person or by certified mail with return receipt
13 requested. Notice is considered to be given by proof of personal delivery or by proof
14 that the notice was mailed to the last-known address of the recipient. Notice shall
15 be served by the petitioner on all of the following:

16 1. The foreign ward, if 12 years of age or over, the foreign ward's guardian ad
17 litem, and the foreign ward's counsel.

18 2. The foreign court from which the foreign guardianship is sought to be
19 transferred. Notice under this subdivision shall include a request that the foreign
20 court provide all of the following:

21 a. Certification that the foreign court has no knowledge that the foreign
22 guardian has engaged in any acts specified in sub.(3) (c), failed to perform any duties
23 of a guardian required by the foreign jurisdiction or the foreign court, or performed
24 any acts prohibited to a guardian by the foreign jurisdiction or the foreign court.

1 b. Copies of all documents filed with the foreign court that are relevant to the
2 foreign guardianship, including the initial petition for the foreign guardianship and
3 other filed documents relevant to the appointment of the guardian; any reports and
4 recommendations of any guardian ad litem or other individual appointed by the
5 foreign court to evaluate the appropriateness of the foreign guardianship; any
6 periodic status reports on the condition of the foreign ward; and any order to transfer
7 the foreign guardianship.

8 3. All other interested persons other than the foreign ward.

9 (d) *Jurisdiction.* Any of the following shall deprive the court of jurisdiction to
10 hear the petition for receipt and acceptance of the foreign guardianship:

11 1. Failure by the petitioner to serve notice under par. (c). ✓

12 2. Failure by the foreign court to provide the certifications and copies specified
13 in par. (c) 2. a. and b. within 30 days after receipt of the notice under par. (c) or to give
14 indication that the foreign court will comply with this subdivision within a
15 reasonable period of time.

16 (e) *Hearing.* 1. If a motion for a hearing on a petition for receipt and acceptance
17 of a foreign guardianship is made by the foreign ward, by a person who has received
18 notice under par. (c) 3., or on the court's own motion, a hearing on the petition shall
19 be heard within 90 days after the petition is filed.

20 2. If a petition for receipt and acceptance of a foreign guardianship includes a
21 request to modify the provisions of the foreign guardianship, the petition shall be
22 heard within 90 days after it is filed.

23 3. If a person receiving notice of the petition for receipt and acceptance of the
24 foreign guardianship challenges the validity of the foreign guardianship or the
25 authority of the foreign court to appoint the foreign guardian, the court may stay the

1 proceeding under this subsection to afford the opportunity to the person to have the
2 foreign court hear the challenge and determine its merits.

3 (f) *Presence at hearing.* 1. The petitioner shall be physically present at the
4 hearing under par. (e) unless the court excuses the petitioner's attendance or, for
5 good cause shown, permits attendance by telephone.

6 2. The petitioner shall ensure that the foreign ward attends the hearing unless
7 the attendance is waived by the guardian ad litem.

8 (g) *Dismissal of petition.* If the court finds any of the following, the court shall
9 dismiss the petition:

10 1. The foreign guardian is not presently in good standing with the foreign court.

11 2. The foreign guardian is moving or has moved the foreign ward from the
12 foreign jurisdiction in order to avoid or circumvent the provisions of the foreign
13 guardianship order.

14 3. The transfer of the foreign guardianship from the foreign jurisdiction is not
15 in the best interests of the foreign ward.

16 (h) *Granting of petition.* The court shall grant a petition for receipt and
17 acceptance of a foreign guardianship if the court finds all of the following:

18 1. That the foreign guardian is presently in good standing with the foreign
19 court.

20 2. That the foreign guardian is not moving or has not moved the foreign ward
21 from the foreign jurisdiction in order to avoid or circumvent the provisions of the
22 foreign guardianship order.

23 3. That the transfer of the foreign guardianship from the foreign jurisdiction
24 is in the best interests of the foreign ward.

✓

1 (i) *Full faith and credit; modification.* In granting a petition under par. (h), the
2 court shall give full faith and credit to the provisions of the foreign guardianship
3 order, except that the court shall modify any provision of the foreign guardianship
4 order as necessary to conform the foreign guardianship order to the requirements of
5 this section and other requirements of this state.

6 (j) *Coordination with foreign court.* In granting the petition for receipt and
7 acceptance of the foreign guardianship, the court shall coordinate with the foreign
8 court the orderly transfer of the foreign guardianship and, in doing so, the court may
9 do all of the following:

10 1. Delay the effective date of the receipt and acceptance of the foreign
11 guardianship.

12 2. Make the receipt and acceptance of the foreign guardianship contingent
13 upon the release or termination of the foreign guardianship and discharge of the
14 foreign guardian under the foreign jurisdiction.

15 3. Recognize concurrent jurisdiction over the guardianship for a reasonable
16 period of time to permit the foreign court to release or terminate the foreign
17 guardianship and discharge the foreign guardian.

18 4. Make other arrangements that the court determines are necessary to
19 effectuate the receipt and acceptance of the foreign guardianship.

20 **(7) STANDBY GUARDIANSHIP.** (a) *Petition.* A person may at any time bring a
21 petition for the appointment of a standby guardian of a child, except that, as specified
22 in s. 48.978 a petition for the appointment of a standby guardian of the person or
23 estate or both of a child to assume the duty and authority of guardianship on the
24 incapacity, death, or debilitation and consent, of the child's parent may be brought
25 under s. 48.978.

1 (b) *Appointment.* At any hearing conducted under this subsection the court
2 may designate one or more standby guardians whose appointment shall become
3 effective immediately upon the death, unwillingness or inability to act, resignation,
4 or removal by the court of the initially appointed guardian or during a period, as
5 determined by the initially appointed guardian, when the initially appointed
6 guardian is temporarily unable to fulfill his or her duties, including during an
7 extended vacation or illness. The powers and duties of the standby guardian shall
8 be the same as those of the initially appointed guardian. The standby guardian shall
9 receive a copy of the court order establishing or modifying the initial guardianship
10 and of the order designating the standby guardian. Upon assuming office, the
11 standby guardian shall so notify the court. Upon notification, the court shall issue
12 new letters of guardianship that specify that the standby guardianship is permanent
13 or that specify the time period for a temporary standby guardianship.

14 **(8) SUCCESSOR GUARDIAN.** (a) *Appointment.* If a guardian dies, is removed by
15 order of the court, or resigns and the resignation is accepted by the court, the court,
16 on its own motion or upon petition of any interested person, may appoint a competent
17 and suitable person as successor guardian. The court may, upon request of any
18 interested person or on its own motion, direct that a petition for appointment of a
19 successor guardian be heard in the same manner and subject to the same
20 requirements as provided under this section for an original appointment of a
21 guardian.

22 (b) *Notice.* If the appointment under par. (a) is made without hearing, the
23 successor guardian shall provide notice to the ward and all interested persons of the
24 appointment, the right to counsel, and the right to petition for reconsideration of the

1 appointment of the successor guardian. The notice shall be served personally or by
2 mail not later than 10 days after the appointment.

3 (9) REVIEW OF CONDUCT OF GUARDIAN. (a) *Continuing jurisdiction of court.* The
4 court that appointed the guardian of a child or that granted a petition for acceptance
5 and receipt of a foreign guardianship has continuing jurisdiction over the guardian.

6 (b) *Cause for court action against a guardian.* The court has cause to impose
7 a remedy under par. (d) if a guardian of a child does any of the following:

- 8 1. Abuses or neglects the child or knowingly permits others to do so.
- 9 2. Engages in self-dealing.
- 10 3. Fails to adequately provide for the personal needs of the child.
- 11 4. Fails to exercise due diligence and reasonable care in assuring that the
12 child's personal needs are being met.
- 13 5. Fails to disclose information specified in sub. (3) (c) that would have
14 prevented appointment of the person as guardian.
- 15 6. Fails to act in the best interests of the child.
- 16 7. Otherwise fails to perform any of his or her duties as a guardian.

17 (c) *Procedure.* Any person may file a petition requesting a review of the conduct
18 of a guardian or the court, on its own motion, may propose such a review. The request
19 or court proposal shall allege facts sufficient to show cause under par. (b) for the court
20 to impose a remedy under par. (d). The court shall hold a hearing on the request or
21 proposal not less than 10, nor more than 60, days after the filing of the request or
22 proposal. Not less than 7 days before the date of the hearing, the court shall cause
23 notice of the hearing to be provided to the child, his or her or parents, the guardian,
24 and any other persons as determined by the court. A copy of the request or proposal
25 shall be attached to the notice.

1 (d) Remedies of the court. If after hearing the court finds by clear and
2 convincing evidence cause as specified in par. (b) to impose a remedy under this
3 paragraph, the court may do any of the following:

4 1. Remove the guardian. ✓

5 2. Enter any other order that may be necessary or appropriate to compel the
6 guardian to act in the best interests of the ward or to otherwise carry out the
7 guardian's duties. ✓

8 3. Require the guardian to pay any costs of the proceeding, including costs of
9 service and attorney fees. ✓

or (7) ✓

10 (10) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* Unless the court
11 order entered under sub. (3) (f) 2., (4), (5), ~~or~~ (6) specifies that a guardianship under
12 this section be for a lesser period of time, a guardianship under this section shall
13 continue until the child attains the age of 18 years unless any of the following occurs:

14 1. The child marries.

15 2. The child dies.

16 3. The child changes residence from this state to another state and a guardian
17 is appointed in the new state of residence.

18 4. The guardian resign and the resignation is accepted by the court.

or (7)

19 5. The guardian is removed for cause under sub. (9) (d) 1.

20 6. The court terminates the guardianship on the request of a parent of the child
21 under par. (b).

22 (b) *Termination on request of parent.* 1. A parent of the child may file a petition
23 requesting that a guardianship order entered under sub. (3) (f) 2. (4), (5), ~~or~~ (6) be
24 terminated. The petition shall allege facts sufficient to show that the parent has
25 remedied the unfitness, unwillingness, or inability to provide for the care, custody,

✓ ✓ ✓ ✓

1 and control of the child or other compelling facts and circumstances on which the
2 guardianship was granted, that the parent is now fit, willing, and able to carry out
3 the duties of a guardian, and that termination of the guardianship would be in the
4 best interests of the child.

5 2. The court shall hold a hearing on the petition unless written waivers of
6 objections to termination of the guardianship are signed by the child, by his or her
7 counsel or guardian ad litem, the parents, and the guardian and the court approves
8 the waivers.

9 3. If a hearing is to be held, by no less than 7 days before the date of the hearing
10 the court shall cause notice of the hearing to be provided to the child, his or her
11 parents, the guardian, and any other persons as determined by the court. A copy of
12 the request or proposal shall be attached to the notice. The court shall terminate the
13 guardianship if the court finds that it has been proved by clear and convincing
14 evidence that the parent has remedied the unfitness, unwillingness, or inability to
15 provide for the care, custody, and control of the child or other compelling facts and
16 circumstances on which the guardianship was granted and that the parent is now
17 fit, willing, and able to carry out the duties of a guardian and if the court determines
18 that termination of the guardianship would be in the best interests of the child.

19 **SECTION 20.** 48.977 (8) of the statutes is amended to read:

20 48.977 (8) ~~RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS~~ OTHER GUARDIANSHIP
21 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian
22 appointed under s. 48.976, ch. 54, 2007 stats., or ch. 880, 2003 stats.

23 (b) Nothing in this section prohibits an individual from petitioning a court
24 under ~~ch. 54 s. 48.976~~ for appointment of a guardian.

1 **SECTION 21.** 48.978 (7) of the statutes is amended to read:

2 **48.978 (7) RELATIONSHIP TO CH. 54 OTHER GUARDIANSHIP PROCEDURES.** (a) Except
3 when a different right, remedy, or procedure is provided under this section, the
4 rights, remedies, and procedures provided in s. 48.976 or ch. 54, whichever is
5 applicable, shall govern a standby guardianship created under this section.

6 (b) This section does not abridge the duties or authority of a guardian appointed
7 under s. 48.976, ch. 880, 2003 stats., or ch. 54.

8 (c) Nothing in this section prohibits an individual from petitioning a court for
9 the appointment of a guardian of the person under s. 48.976 or a guardian of the
10 estate under ch. 54.

11 History: 1997 a. 334; 2005 a. 130, 387; 2007 a. 96.

11 **SECTION 22.** 48.979 of the statutes is created to read:

12 **48.979 Delegation of power by parent, guardian, or legal custodian.** A
13 parent, guardian, or legal custodian of a child, by a properly executed power of
14 attorney, may delegate to another person, for a period not exceeding one year, any
15 of his or her powers regarding the care and custody of the child, except the power to
16 consent to the marriage or adoption of the child.

17 **SECTION 23.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

18 51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62
19 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
20 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
21 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
22 or for whom a guardian of the person is appointed under, ~~or~~ s. 48.976, s. 54.10, 2007
23 stats., or s. 880.33, 2003 stats.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45, 97, 108.

1 **SECTION 24.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

2 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed
3 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with
4 developmental disability who has a parent or has a guardian appointed under s.
5 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33,
6 2003 stats., information concerning the patient that is obtainable by staff members
7 of the agency or nonprofit corporation with which the agency has contracted is
8 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,
9 if any; the name, birth date and county of residence of the patient; information
10 regarding whether the patient was voluntarily admitted, involuntarily committed
11 or protectively placed and the date and place of admission, placement or
12 commitment; and the name, address and telephone number of the guardian of the
13 patient and the date and place of the guardian's appointment or, if the patient is a
14 minor with developmental disability who has a parent or has a guardian appointed
15 under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or
16 s. 880.33, 2003 stats., the name, address and telephone number of the parent or
17 guardian appointed under s. 48.831 of the patient.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45, 97, 108.

18 **SECTION 25.** 54.01 (10) of the statutes is amended to read:

19 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to
20 manage the income and assets and provide for the essential requirements for health
21 and safety and the personal needs of a ~~minor~~, an individual found incompetent, or
22 a spendthrift or to manage the income and assets of a minor.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268; 2005 a. 264; 2005 a. 387 ss. 100, 295 to 297, 301, 303 to 305; Stats. 2005 s. 54.01; 2005 a. 388; 2007 a. 45; 2007 a. 97 s. 231.

23 **SECTION 26.** 54.10 (1) of the statutes is amended to read:

1 54.10 (1) A court may appoint ~~a guardian of the person~~ or a guardian of the
2 estate, ~~or both~~, for an individual if the court determines that the individual is a
3 minor. Except as provided in ss. 48.831, 48.977, and 48.978, an appointment of a
4 guardian of the person of a minor shall be conducted under the procedures specified
5 in s. 48.976.

6 History: 2005 a. 387; 2007 a. 45.

6 **SECTION 27.** 54.52 (1) of the statutes is amended to read:

7 54.52 (1) A person may at any time bring a petition for the appointment of a
8 standby guardian of the person or estate of an individual who is determined under
9 s. 54.10 to be incompetent, ~~a minor~~, or a spendthrift or for the appointment of a
10 standby guardian of the estate of a minor, except that, as specified in s. ~~48.97~~ 48.978 ⁵
11 a petition for the appointment of a standby guardian of the person or ~~property~~ estate,
12 or both, of a minor to assume the duty and authority of guardianship on the
13 incapacity, death, or debilitation and consent, of the minor's parent may be brought
14 under s. 48.978.

15 History: 1973 c. 284; 1993 a. 486; 1997 a. 334; 2005 a. 387 ss. 507 to 509; Stats. 2005 s. 54.52; 2007 a. 45.

15 **SECTION 28.** 54.56 of the statutes is renumbered 48.976 (11) and amended to
16 read:

17 48.976 (11) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS. (a)
18 In this section subsection, "stepparent" means the surviving spouse of a deceased
19 parent of a ~~minor~~ child, whether or not the surviving spouse has remarried.

20 (b) If one or both parents of a ~~minor~~ child are deceased and the ~~minor~~ child is
21 in the custody of the surviving parent or any other person, a grandparent or
22 stepparent of the ~~minor~~ child may petition for visitation privileges with respect to the
23 ~~minor~~ child, whether or not the person with custody is married. The grandparent
24 or stepparent may file the petition in a guardianship or temporary guardianship

1 proceeding under this ~~chapter~~ section that affects the ~~minor~~ child or may file the
2 petition to commence an independent action under this ~~chapter~~ subsection. Except
3 as provided in ~~sub. (3m)~~ par. (cm), the court may grant reasonable visitation
4 privileges to the grandparent or stepparent if the surviving parent or other person
5 who has custody of the ~~minor~~ child has notice of the hearing and if the court
6 determines that visitation is in the best interest of the ~~minor~~ child. ✓

7 (c) Whenever possible, in making a determination under ~~sub. (2)~~ par. (b), the
8 court shall consider the wishes of the ~~minor~~ child. ✓

9 (cm) 1. Except as provided in ~~par. (b)~~ subd. 2. ✓, the court may not grant visitation
10 privileges to a grandparent or stepparent under this ~~section~~ subsection ✓ if the
11 grandparent or stepparent has been convicted under s. 940.01 of the first-degree
12 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of
13 a parent of the ~~minor~~ child, and the conviction has not been reversed, set aside, or
14 vacated.

15 2. ~~Paragraph (a) Subdivision 1.~~ does not apply if the court determines by clear
16 and convincing evidence that the visitation would be in the best interests of the ~~minor~~
17 child. The court shall consider the wishes of the ~~minor~~ child in making the
18 determination.

19 (d) The court may issue any necessary order to enforce a visitation order that
20 is granted under this ~~section~~ subsection, and may from time to time modify the
21 visitation privileges or enforcement order for good cause shown.

22 (dm) 1. If a grandparent or stepparent granted visitation privileges with
23 respect to a ~~minor~~ child under this ~~section~~ subsection is convicted under s. 940.01 of
24 the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
25 intentional homicide, of a parent of the ~~minor~~ child, and the conviction has not been

1 reversed, set aside, or vacated, the court shall modify the visitation order by denying
2 visitation with the ~~minor~~ child upon petition, motion, or order to show cause by a
3 person having custody of the ~~minor~~ child, or upon the court's own motion, and upon
4 notice to the grandparent or stepparent granted visitation privileges.

5 2. Paragraph ~~(a)~~ Subdivision 1. does not apply if the court determines by clear
6 and convincing evidence that the visitation would be in the best interests of the ~~minor~~
7 child. The court shall consider the wishes of the ~~minor~~ child in making the
8 determination.

9 (e) This section applies to every ~~minor~~ child in this state whose parent or
10 parents are deceased, regardless of the date of death of the parent or parents.

History: 1975 c. 122; 1995 a. 38; 1999 a. 9; 2005 a. 387 s. 373; Stats. 2005 s. 54.56.

11 **SECTION 29.** 54.57 of the statutes is renumbered 48.976 (12) and amended to
12 read:

13 48.976 (12) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF ~~A~~ PARENT KILLS
14 OTHER PARENT. (a) Except as provided in sub. (2), ~~in an action under this chapter that~~
15 ~~affects a minor par. (b),~~ a court may not grant to a parent of the ~~minor~~ a child who
16 is the subject of a proceeding under this section visitation or physical placement
17 rights with the ~~minor~~ child if the parent has been convicted under s. 940.01 of the
18 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
19 homicide, of the ~~minor's~~ child's other parent, and the conviction has not been
20 reversed, set aside, or vacated.

21 (b) ~~Subsection (1)~~ Paragraph (a) does not apply if the court determines by clear
22 and convincing evidence that visitation or periods of physical placement would be in

1 the best interests of the ~~minor~~ child. The court shall consider the wishes of the ~~minor~~
2 child in making the determination.

3 **History:** 1999 a. 9; 2005 a. 387 ss. 374 to 376; Stats. 2005 s. 54.57.

3 **SECTION 30.** 55.03 (1) of the statutes is amended to read:

4 55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting
5 as a guardian appointed under s. 48.976, ch. 880, 2003 stats., or ch. 54, 2007 stats.,
6 may be a provider of protective services or protective placement for its ward under
7 this chapter.

8 **History:** 1973 c. 284; 1979 c. 330; 2005 a. 264 ss. 81, 83, 117; 2005 a. 387; 2007 a. 45.

8 **SECTION 31.** 115.76 (12) (b) 2. of the statutes is amended to read:

9 115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was
10 made a ward of the state, county, or child welfare agency under ch. 54, 2007 stats.,
11 or ch. 880, 2003 stats., or if a child has been placed in the legal custody or
12 guardianship of the state, county, or child welfare agency under ch. 48 or ~~ch.~~ 767.

13 **History:** 1997 a. 164, 237; 1999 a. 116, 161; 2001 a. 59; 2005 a. 258, 344, 387; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97.

13 **SECTION 32.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

14 146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62
15 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
16 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
17 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
18 or for whom a guardian of the person is appointed under s. 48.976, s. 54.10, 2007
19 stats., or s. 880.33, 2003 stats.

20 **History:** 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995
a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6)
(a); 2007 a. 45, 106, 108, 130.

20 **SECTION 33.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

21 146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed
22 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with
23 developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a

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1 guardian appointed under s. 48.831 and does not have a guardian appointed under
 2 s. 48.976 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that
 3 is obtainable by staff members of the agency or nonprofit corporation with which the
 4 agency has contracted is limited, except as provided in subd. 9. e., to the nature of
 5 an alleged rights violation, if any; the name, birth date and county of residence of the
 6 patient; information regarding whether the patient was voluntarily admitted,
 7 involuntarily committed or protectively placed and the date and place of admission,
 8 placement or commitment; and the name, address and telephone number of the
 9 guardian of the patient and the date and place of the guardian's appointment or, if
 10 the patient is a minor with developmental disability who has a parent or has a
 11 guardian appointed under s. 48.831 and does not have a guardian appointed under
 12 s. 48.976 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number
 13 of the parent or guardian appointed under s. 48.831 of the patient.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130.

14 **SECTION 34.** 757.69 (1m) (e) of the statutes is amended to read:

15 757.69 (1m) (e) Conduct hearings, make findings, or issue orders in
 16 proceedings under s. 48.976, 48.977, or 48.978.

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105; 2005 a. 264, 387; 2007 a. 45, 179.

17 **SECTION 35.** 808.075 (4) (a) 9^m of the statutes is created to read:

18 808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.976 (9). ✓

19 **SECTION 36.** 808.075 (4) (a) 11. of the statutes is amended to read:

20 808.075 (4) (a) 11. Termination of guardianship under s. 48.976 (10) or 48.977
 21 (7), including removal of a guardian. ✓

History: Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 86; 1993 a. 16, 446, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334; 1999 a. 9; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; 2005 a. 264, 387, 434; 2005 a. 443 ss. 263, 265.

22 **SECTION 37.** 808.075 (4) (a) 13. of the statutes is created to read:

1 808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.976 (8).
2 **SECTION 38.** 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14.
3 and amended to read:

4 808.075 (4) (a) 14. Order for visitation under s. ~~54.56~~ 48.976 (11).

History: Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 86; 1993 a. 16, 446, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334; 1999 a. 9; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; 2005 a. 264, 387, 434; 2005 a. 443 ss. 263, 265.

5 **SECTION 39.** 814.66 (1) (m) of the statutes is amended to read:

6 814.66 (1) (m) For filing a petition under s. ~~54.56~~ 48.976 (11), whether in a
7 guardianship or temporary guardianship proceeding or to commence an
8 independent action, \$60.

History: 1981 c. 317; 1985 a. 329; 1989 a. 56; 1991 a. 220, 281; 1993 a. 160; 1995 a. 27, 38, 224; 1997 a. 83; 2001 a. 16; 2003 a. 33; 2005 a. 387.

9 **SECTION 40.** 938.02 (8) of the statutes is amended to read:

10 938.02 (8) "Guardian" means the person named by the court having the duty
11 and authority of guardianship guardian of the person of a juvenile.

History: 1995 a. 77, 216, 352, 448; 1997 a. 27, 35, 181, 191; 1999 a. 9, 162; 2001 a. 16, 59; 2003 a. 33, 284; 2005 a. 232, 344, 387; 2005 a. 443 s. 265; 2007 a. 20 ss. 3780 to 3782, 9121 (6) (a).

12 **SECTION 41.** 938.345 (1) (e) of the statutes is amended to read:

13 938.345 (1) (e) Place any juvenile not found under ch. 880, 2003 stats., or ch.
14 46, ~~48~~, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to
15 be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively
16 treats one or more of those categories of juveniles.

History: 1995 a. 77; 1997 a. 27, 164; 1999 a. 9, 89; 2003 a. 50; 2005 a. 25, 344, 387; 2007 a. 96, 97.

17 **SECTION 42. Nonstatutory provisions.**

18 (1) TRANSITION. Notwithstanding the treatment of sections 54.01 (10) and 54.10
19 (1) of the statutes by this act, all guardianships of the person of a minor under section
20 54.10, 2007 stats., in effect on the effective date of this subsection remain in effect
21 until terminated by court order under section 48.976 (10) of the statutes, as created
22 by this act, or removed by court order under section 48.976 (9) (d) 1. of the statutes,
23 as created by this act, and all matters commenced under ch. 54, 2007 stats., with

1 respect to a guardianship of the person of a minor that are pending on the effective
2 date of this subsection shall be completed under ch. 54, stats.

3 **SECTION 43. Initial applicability.**

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4 (1) PETITIONS FOR GUARDIANSHIP. Except as provided in subsection (2), this act
5 first applies to a petition for full, limited, temporary, emergency, standby, or
6 successor guardianship or a petition for the receipt and acceptance of a foreign
7 guardianship filed on the effective date of this subsection.

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8 (2) DUTIES AND AUTHORITY OF GUARDIAN OF THE PERSON. The treatment of sections
9 48.028 (intro.), (3), and (4) and 48.976 (2) (c) 5. of the statutes first applies to a
10 guardianship of the person of a minor in effect on the effective date of this subsection. ✓

11 **SECTION 44. Effective date.**

12 (1) GUARDIANSHIPS OF CHILDREN. This act takes effect on the first day of the 6th
13 month beginning after publication.

14 (END)

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