



State of Wisconsin
2009-2010 LEGISLATURE

LRB-0893/P3

GMM:cjs:rs

P3
AMR

IN 1115
Wanted 1125

Slays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen Cat

Request

SA ✓

1 **AN ACT** *to renumber and amend* 54.56, 54.57 and 808.075 (4) (f) 3.; *to amend*
2 48.02 (8), 48.023 (intro.), 48.023 (3), 48.023 (4), 48.09 (5), 48.14 (2) (b), 48.14 (11),
3 48.235 (1) (c), 48.299 (4) (a), 48.299 (4) (b), 48.345 (intro.), 48.368 (1), 48.62 (2),
4 48.831 (1), 48.831 (1m) (e), 48.977 (2) (a), 48.977 (2) (f), 48.977 (8), 48.978 (7),
5 49.32 (1) (am), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18. c., 54.01 (10), 54.10 (1), 54.52
6 (1), 55.03 (1), 55.10 (4) (intro.), 55.10 (4) (a), 115.76 (12) (b) 2., 146.82 (2) (a) 9.
7 a., 146.82 (2) (a) 9. c., 214.37 (4) (k) 1., 215.26 (8) (e) 1., 757.69 (1m) (e), 808.075
8 (4) (a) 11., 814.66 (1) (m), 938.02 (8) and 938.345 (1) (e); and **to create** 48.235
9 (3) (c), 48.976, 48.979, 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the statutes;
10 **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:

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

2 48.02 (8) "Guardian" means the person named by the court having the duty and
3 authority of ~~guardianship~~ guardian of the person of a child under s. 48.023.

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

5 **48.023 Guardianship.** (intro.) Except as limited by an order of the court
6 under s. 48.976 (2) (c) 2., 48.977 (5) (b), or 48.978 (6) (b) 2., a person appointed by the
7 court to be the guardian of a child under this chapter has the duty and authority to
8 make important decisions in matters having a permanent effect on the life and
9 development of the child and the duty to be concerned about the child's general
10 welfare, including ~~but not limited to~~ all of the following: determine ✓

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

12 48.023 (3) The right and duty of reasonable visitation of with the child and,
13 subject to an order of a court of competent jurisdiction, the authority to ~~permit~~
14 reasonable visitation with the child.

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

16 48.023 (4) The rights and responsibilities of physical custody and legal custody,
17 including the right to change the residence of the child from this state to another
18 state, except when physical custody or legal custody has been vested in another
19 person or when the child is under the supervision of the department of corrections
20 under s. 938.183, 938.34 (4h), (4m) or (4n), or 938.357 (4) or the supervision of a
21 county department under s. 938.34 (4d) or (4n).

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

23 48.09 (5) By the district attorney or, if designated by the county board of
24 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,
25 48.976, or 48.977. If the county board transfers this authority to or from the district

1 attorney on or after May 11, 1990, the board may do so only if the action is effective
2 on September 1 of an odd-numbered year and the board notifies the department of
3 administration of that change by January 1 of that odd-numbered year.

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

5 48.14 (2) (b) The appointment and removal of a guardian of the person for a
6 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977,
7 and 48.978 ~~and ch. 54~~ and for a child found to be in need of protection or services
8 under s. 48.13 because the child is without parent or guardian.

(11)

9 SECTION 7. 48.14 (11) of the statutes is amended to read:

10

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

11 SECTION 8. 48.235 (1) (c) of the statutes is amended to read:

12 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is
13 the subject of a proceeding to terminate parental rights, whether voluntary or
14 involuntary, for a child who is the subject of a contested adoption proceeding, and for
15 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

16 SECTION 9. 48.235 (3) (c) of the statutes is created to read:

17 48.235 (3) (c) In addition to any other duties and responsibilities required of
18 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of
19 a proceeding under s. 48.976 shall do all of the following unless granted leave by the
20 court not to do so:

- 21 1. Personally, or through a trained designee, meet with the child, assess the
- 22 appropriateness and safety of the environment of the child, and, if appropriate to the
- 23 age and developmental level of the child, interview the child and determine the
- 24 child's goals and concerns regarding the proposed guardianship.

If the child is 12 years of age or over, the guardian ad litem shall
 also ~~request the appointment, of counsel or retain counsel of his or her own choosing~~
 advise the child that he or she may ~~request the guardianship~~

if appropriate

1

2. Interview the proposed guardian, personally, or through a trained designee,

2

visit the guardian's home, and report to the court concerning the suitability of the

3

proposed guardian to serve as guardian.

of the child

relating

4

3. Attend all court proceedings ~~relating~~ to the guardianship, present evidence

5

concerning the best interests of the child, if necessary, and make clear and specific

6

recommendations to the court concerning the best interests of the child at every stage

7

of the proceeding.

8

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

9

SECTION 10. 48.299 (4) (a) of the statutes is amended to read:

10

48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at

11

the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978

12

(2) (e) and (3) (f) 2.

13

SECTION 11. 48.299 (4) (b) of the statutes is amended to read:

14

48.299 (4) (b) Except as provided in s. 901.05, neither common law nor

15

statutory rules of evidence are binding at a hearing for a child held in custody under

16

s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a

17

runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing

18

about changes in placement, revision of dispositional orders, extension of

19

dispositional orders or termination of guardianship orders entered under s. 48.976,

20

48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall

21

admit all testimony having reasonable probative value, but shall exclude

22

immaterial, irrelevant or unduly repetitious testimony or evidence that is

23

inadmissible under s. 901.05. Hearsay evidence may be admitted if it has

24

demonstrable circumstantial guarantees of trustworthiness. The court shall give

25

effect to the rules of privilege recognized by law. The court shall apply the basic

1 principles of relevancy, materiality and probative value to proof of all questions of
2 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may
3 be made and shall be noted in the record.

4 **SECTION 12.** 48.345 (intro.) of the statutes is amended to read:

5 **48.345 Disposition of child or unborn child of child expectant mother**
6 **adjudged in need of protection or services.** (intro.) If the judge finds that the
7 child is in need of protection or services or that the unborn child of a child expectant
8 mother is in need of protection or services, the judge shall enter an order deciding one
9 or more of the dispositions of the case as provided in this section under a care and
10 treatment plan, except that the order may not place any child not specifically found
11 under this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled,
12 mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that
13 exclusively ~~treat~~ treats those categories of children, and the court may not place any
14 child expectant mother of an unborn child in need of protection or services outside
15 of the child expectant mother's home unless the court finds that the child expectant
16 mother is refusing or has refused to accept any alcohol or other drug abuse services
17 offered to her or is not making or has not made a good faith effort to participate in
18 any alcohol or other drug abuse services offered to her. The dispositions under this
19 section are as follows:

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

21 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41
22 or 48.415 or an appeal from a judgment terminating or denying termination of
23 parental rights is filed during the year in which a dispositional order under s. 48.355,
24 an extension order under s. 48.365, a voluntary agreement for placement of the child
25 under s. 48.63, or a guardianship order under ch. 54, 2007 stats., or ch. 880, 2003

1 stats., or s. ~~48.976 or 48.977 or ch. 54~~ is in effect, the dispositional or extension order,
2 voluntary agreement, or guardianship order shall remain in effect until all
3 proceedings related to the filing of the petition or an appeal are concluded.

4 **SECTION 14.** 48.62 (2) of the statutes is amended to read:

5 48.62 (2) A relative, or a guardian of a child who provides care and
6 maintenance for the child is not required to obtain the license specified in this
7 section. The department, county department, or licensed child welfare agency as
8 provided in s. 48.75 may issue a license to operate a foster home or a treatment foster
9 home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests
10 a license to operate a foster home or treatment foster home for a specific child who
11 is either placed by court order or who is the subject of a voluntary placement
12 agreement under s. 48.63. The department, a county department, or a licensed child
13 welfare agency may, at the request of a guardian appointed under s. 48.976, 48.977,
14 or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the guardian's home as
15 a foster home or treatment foster home for the guardian's minor ward who is living
16 in the home and who is placed in the home by court order. Relatives with no duty of
17 support and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007
18 stats., or ch. 880, 2003 stats., who are licensed to operate foster homes or treatment
19 foster homes are subject to the department's licensing rules.

20 **SECTION 15.** 48.831 (1) of the statutes is amended to read:

21 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment
22 of a guardian of a child who does not have a living parent if a finding as to the
23 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~
24 s. 48.976 applies to the appointment of a guardian for a child who does not have a
25 living parent for all other purposes. An appointment of a guardian of the estate of

✓
Insert
6-19-19

48

10

1 a child who does not have a living parent shall be conducted in accordance with the
2 procedures specified in ch. 54.

3 SECTION 16. 48.831 (1m) (e) of the statutes is amended to read:

4 48.831 (1m) (e) A guardian appointed under s. 48.976, ch. 54, 2007 stats., or
5 ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court
6 under s. 46.976 (9), 54.54 (1), 2007 stats., or s. 880.17 (1), 2003 stats.

7 SECTION 17. 48.976 of the statutes is created to read:

8 48.976 Appointment of guardian of the person of a child. (1)

9 DEFINITION. In this section, ^{interested person} means any of the following:
~~stays~~ ~~period stays~~

10 (a) "Indian child" has the meaning given in 25 USC 1903 (4).

11 (b) "Indian child's tribe" has the meaning given in 25 USC 1903 (5).

12 (c) "Indian custodian" has the meaning given in 25 USC 1903 (6).

13 (d) "Interested person" means any of the following:

14 (a) For purposes of a petition for guardianship of a child, any of the following:

15 (1) The child, if he or she has attained 12 years of age.

16 (2) The ~~parents of the child~~ ^{child's parents, guardian, and legal custodian}.

17 (3) Any individual who is nominated as guardian ^{and any individual who is}
18 ~~appointed to act as guardian or fiduciary for the child by a court of any state.~~

19 (4) ~~The individual who has exercised principal responsibility for the care and~~
20 ~~custody of the child during the period of 60 consecutive days immediately before the~~
21 ~~filing of the petition.~~

22 (5) If the child has no living parent, any individual nominated to act as fiduciary
23 for the child in a will or other written instrument that was executed by a parent of
24 the child.

3. Any person to whom notice is required to be given under
s. 48.27 (3)(b).

X
X
X
X

The child's
counsel

the child's
guardian ad litem and

and physical custodian

child's parents, guardian, and legal custodian

and any individual who is

appointed to act as guardian or fiduciary for the child by a court of any state

The individual who has exercised principal responsibility for the care and
custody of the child during the period of 60 consecutive days immediately before the
filing of the petition.

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

Any person to whom notice is required to be given under
s. 48.27 (3)(b).

✓

6.

1 If the child is receiving any public services or benefits, the county department
2 or, in a county having a population of 500,000 or more, the department that is
3 providing the services or benefits through the person representing the interests &
the public under s. 48.09 ✓

4 ~~(b) g. The person representing the interests of the public under s. 48.09 of the~~
5 ~~county in which the petition is filed and, if the petition is filed in a county other than~~
6 ~~the county of the child's residence, the person representing the interests of the public~~
7 ~~of the county of the child's residence.~~

8 ~~(a)~~ If the child is an Indian child, the Indian child's Indian custodian and ~~the~~
9 Indian child's tribe. STET: leave as typed

10 Any other person ~~that the court may require.~~ STET: leave as typed

11 (b) For purposes of proceedings subsequent to an order for guardianship of a
12 child, any of the following:

13 1. The child, if 12 years of age or over, the child's guardian ad litem,
2. The guardian. and the child's counsel.

14 3. The parents of the child. in the guardianship

15 4. The county of venue, through the person representing the interests of the
16 public under s. 48.09, if the county has an interest. STET: leave as typed

17 5. If the child is an Indian child, the Indian child's tribe.

18 6. Any other person that the court may require. STET: leave as typed

19 (e) "Standby guardian" means an individual designated by the court under sub.
20 (6) whose appointment as guardian becomes effective immediately upon the death,
21 unwillingness or inability to act, resignation, or removal by the court of the initially
22 appointed guardian, or if the initially appointed guardian is temporarily unable to
23 fulfill his or her duties.

24 (f) "Successor guardian" means an individual appointed under sub. (7).

This
~~IMMEDIATE~~

1

(2) APPOINTMENT, NOMINATION; DUTY AND AUTHORITY ~~IMMEDIATE~~ (a) *Appointment.*

2

1. ~~Except as provided in ss. 48.831, 48.977, and 48.978, this~~ section may be used for the appointment of a guardian of the person for a child. An appointment of a guardian of the estate of a child shall be conducted under the procedures specified

3

4

5

in ch. 54. This section does not prohibit a person from petitioning a court under ss. 48.831, 48.977, or 48.978 for the appointment of a

6

2. The court may appoint coguardians of the person for a child under this guardian section, subject to any conditions that the court imposes. Unless the court orders of the person otherwise, any decision concerning the child must be concurred in by all coguardians of a child. or is void.

7

8

9

10

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

11

12

13

14

15

16

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

17

18

19

20

21

3. In determining who is appointed as guardian, the court shall consider the nominations of the parents and child and the opinions of the parents and child as to what is in the best interests of the child, but the best interests of the child as determined by the court shall control in making the determination when those nominations and opinions are in conflict with those best interests.

22

23

24

25

1 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.
2 5., a guardian appointed under sub. (3) (f) 2. shall have all of the duties and authority
3 specified in s. 48.023, unless those duties and that authority are limited under subd.
4 2.

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

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

21 4. 'Emergency guardianship.' If it is demonstrated to the court that the welfare
22 of a child requires the immediate appointment of an emergency guardian, the court
23 may appoint an emergency guardian as provided under sub. (5).

24 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the
25 parent as a result of the parent-child relationship that are not assigned to the

or court order

1 guardian or otherwise limited by statute. A guardian acting on behalf of a child may
2 exercise only those powers that the guardian is authorized to exercise by statute or
3 court order. The court may authorize a guardian to exercise only those powers that
4 are necessary to provide for the care, custody, and control of the child and to exercise
5 those powers in a manner that is appropriate to the child.

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

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

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

15 3. Whether the petitioner is requesting a full guardianship, a limited
16 guardianship, a temporary guardianship, or an emergency guardianship.

17 4. If the petitioner is requesting a full guardianship, the facts and
18 circumstances establishing that the child's parents are unfit, unwilling, or unable to
19 provide for the care, custody, and control of the child or ~~of~~ other compelling facts and
20 circumstances demonstrating that a full guardianship is necessary.

21 5. If the petitioner is requesting a limited guardianship, the facts and
22 circumstances establishing that the child's parents need assistance in providing for
23 the care, custody, and control of the child and a statement of the specific duties and
24 authority under s. 48.023 sought by the petitioner for the proposed guardian and the
25 specific parental rights and duties that the petitioner seeks to have transferred.

1 6. If the petitioner is requesting a temporary guardianship, the facts and
 2 circumstances establishing that the child's particular situation, including the
 3 inability of the child's parents to provide for the care, custody, and control of the child
 4 for a temporary period of time, requires the appointment of a temporary guardian;
 5 the reasons for the appointment of a temporary guardian; and the powers requested
 6 for the temporary guardian.

7 7. If the petitioner is requesting an emergency guardianship, the facts and
 8 circumstances establishing that the welfare of the child requires the immediate
 9 appointment of an emergency guardian.

10 8. The facts and circumstances establishing that the proposed guardian is fit,
 11 willing, and able to serve as the child's guardian.

12 9. Whether the proceedings are subject to the Uniform Child Custody
 13 Jurisdiction and Enforcement Act under ch. 822.

14 10. Whether the child may be subject to the federal Indian Child Welfare Act,
 15 25 USC 1901 to 1963 and, if the child may be subject to that act, the names and
 16 addresses of the child's Indian custodian, if any, and Indian tribe, if known ^{and}

17 ⁽¹⁷⁾ reliable and credible information showing that continued custody of the child by the
 18 child's ~~parents, as defined in 25 USC 1903 (9)~~ ^{parent} or Indian custodian is likely to result
 19 in serious emotional or physical damage to the child under ~~25 USC 1912 (a)~~ ^{s. 48.028 (4)(a) 1.} and that
 20 active efforts under ~~25 USC 1912 (b)~~ ^{s. 48.028 (4)(a) 2.} have been made to prevent the breakup of the
 21 Indian child's family and that those efforts have proved unsuccessful. ✓

22 ^{12.} ~~11.~~ Whether the petitioner is aware of any guardianship or other related
 23 proceeding involving the child that is pending in another state or county and, if so,
 24 the details of the guardianship or related proceeding. ✓

^{11.} If the petitioner knows or has reasons to know that the child is an Indian child

interested persons, unless notice is specifically waived by ~~the~~ an interested person or by the court for good cause shown.

Except as provided in subd. 3 of the

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

- 4 ~~a. The child if the child is 12 years of age or over, the child's guardian ad litem,~~
- 5 ~~and the child's counsel.~~
- 6 ~~b. The child's parents and current guardian, legal custodian, and physical~~
- 7 ~~custodian.~~
- 8 ~~c. The proposed guardian.~~
- 9 ~~d. All other interested persons, unless specifically waived by the court.~~
- 10 ~~e. Any other person that the court may require.~~

11 2. A notice shall be in writing. ~~A~~ copy of the petition and any other required

12 document shall be attached to the notice. ~~Unless otherwise provided, notice~~ shall be
13 delivered in person or by certified ^{1st class} mail ~~with return receipt requested~~. Notice is

14 considered to be given by proof of personal delivery ~~or~~ by proof that the notice was
15 mailed to the last-known address of the recipient. ~~Failure of the petitioner to provide~~ ^{or if the recipient is an adult by the written admission of service of the person served}

16 ~~notice to all interested persons shall deprive the court of jurisdiction unless receipt~~
17 ~~of notice is waived by the interested person or by the court under subd. 1. d.~~

18 3. If ~~the child is~~ ^{the petitioner knows or has reasons to know that} an Indian child, notice to the Indian child's ~~parents, as defined~~

19 ~~in 25 USC 1903 (9)~~ ^{parent} Indian custodian, and Indian tribe shall be provided in the
20 manner specified in ~~25 USC 1912 (a)~~ ^{OR comma stays} and the time of the hearing under par. (d) shall
21 be subject to 25 USC 1912 (a).

22 (c) Statement ~~of will~~ by proposed guardian. 1. At least 96 hours before the
23 hearing under par. (d), the proposed guardian shall submit to the court a sworn and
24 notarized statement as to the number of persons for whom the proposed guardian is
25 responsible, whether as a parent, guardian, or legal custodian, as to the proposed

3
[INSERT]
13-21

1 guardian's income, assets, debts, and living expenses, and as to whether the
2 proposed guardian is currently charged with or has been convicted of a crime or has
3 been determined under s. 48.981 (3) (c) to have abused or neglected a child.

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

7 (d) *Hearing.* 1. The initial hearing on a petition for guardianship, other than
8 a petition for emergency guardianship under sub. (5), shall be heard within 30 days
9 after the filing of the petition. At the hearing the court shall first determine whether
10 any party wishes to contest the petition. If the petition is not contested, the court
11 shall immediately proceed to a fact-finding and dispositional hearing, unless an
12 adjournment is requested. If the petition is contested or if an adjournment is
13 requested, the court shall set a date for a fact-finding and dispositional hearing that
14 allows reasonable time for the parties to prepare but is not more than 30 days after
15 the initial hearing. The court shall hold the fact-finding and dispositional hearing
16 at the time specified or set by the court under this subdivision, at which any
17 interested person described in subd. 3. may present evidence, including expert
18 testimony, and argument relating to the allegations in the petition.

19 2. If the petition is contested, if any interested person ~~described in subd. 3~~
20 requests, or on the court's own motion, the court ~~shall~~ order the county department,
21 a licensed child welfare agency, or, in a county having a population of 500,000 or
22 more, the department or an agency under contract with the department to conduct
23 an investigation to determine whether the child is a proper subject for guardianship
24 and whether the proposed guardian's home is suitable for the child. The person
25 conducting the investigation shall file a report of its investigation with the court at

may
that is a necessary party under s. 803.03

1 least 96 hours before the fact-finding and dispositional hearing. The parents of the
2 child and the proposed guardian shall reimburse the person conducting the
3 investigation for the cost of the investigation according to a fee schedule established
4 by the department based on ability to pay.

5 3. The proposed guardian and any proposed standby guardian shall be
6 physically present at the hearing unless the court excuses the attendance of either
7 or, for good cause shown, permits attendance by telephone. The child is not required
8 to attend the hearing, but if the child has nominated the proposed guardian, the child
9 shall provide to his or her guardian ad litem sufficient information for the guardian
10 ad litem to advise the court whether the nomination is in the best interests of the
11 child. An interested person may participate in the hearing on the petition if the court
12 determines that the interested person is a necessary party under s. 803.03.

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

15 1. Any nominations made under sub. (2) (b) 1. or 2. and the opinions of the
16 parents and child as to what is in the best interests of the child, but the best interests
17 of the child as determined by the court shall control in making the determination
18 when those nominations and opinions are in conflict with those best interests.

19 2. Whether the proposed guardian would be fit, willing, and able to serve as the
20 guardian of the child. s. 48.028 (7)(b) ✓

21 3. If the child is an Indian child, the order of placement preference under 26
22 USS 1915 (b) or, if applicable, 25 USC 1915 (e).

23 4. Whether appointment of the proposed guardian as the child's guardian is in
24 the best interests of the child.

s. 48.028 (7)(c), unless the court finds good cause as described in
s. 48.028 (7)(e), for departing from that order

The disposition may also designate an amount of support to be paid by the child's parents and, subject to sub. (d), may include reasonable rules of parental visitation.

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

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

7 2. A disposition ordering that the proposed guardian be appointed as the child's
8 full guardian under sub. (2) (c) 1., limited guardian under sub. (2) (c) 2., or temporary
9 guardian under sub. (2) (c) 3., if the court determines that the allegations in the
10 petition have been proved by clear and convincing evidence and that such an
11 appointment is in the best interests of the child. If the court orders the proposed
12 guardian to be appointed as the child's guardian, the court shall issue letters of
13 guardianship under the seal of the court to the guardian.

14 (4) TEMPORARY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court
15 may appoint a temporary guardian for a child for a period not to exceed 180 days,
16 except that the court may extend this period for good cause shown for one additional
17 180-day period. The court's determination and order appointing the temporary
18 guardian shall specify the authority of the temporary guardian and shall be limited
19 to those acts that are reasonably related to the reasons for appointment that are
20 specified in the petition for temporary guardianship. The authority of the temporary
21 guardian is limited to the performance of those acts stated in the order of
22 appointment.

23 (b) *Procedures for appointment.* A petition for the appointment of a temporary
24 guardian shall be heard in the same manner and is subject to the same requirements
25 as provided in this section for the appointment of a full or limited guardian.

(use 3x)
temporary

1 (c) *Cessation of powers.* The duties and powers of the ~~emergency~~ guardian cease
 2 upon the expiration of the time period specified in par. (a), or the termination as
 3 determined by the court of the situation of the child that was the cause of the
 4 ~~emergency~~ guardianship. Upon cessation of ~~an emergency~~ ^{a temporary} guardianship, the
 5 ~~emergency~~ guardian shall file with the court any report that the court requires.

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

13 (b) *Procedures for appointment.* All of the following ^{possible} procedures apply to the
 14 appointment of an emergency guardian:

15 1. Any person may petition for the appointment of an emergency guardian for
 16 a child. The petition shall contain the information required under sub. (3) (a) and
 17 ~~and of the time and place of the hearing under sub. 4.~~ shall specify the reasons for the appointment of an emergency guardian and the
 18 powers requested for the emergency guardian.

19 2. The petitioner shall give notice of the petition to the ~~persons specified in sub.~~

20 ~~(3) (b) by the most practical means.~~ The notice and a copy of the petition shall be
 21 served ~~before or at the time the petition is filed or~~ as soon after the filing of the
 22 petition as possible and shall include notice of the right to ~~counsel~~ ^{request the appointment of counsel} and of the right ~~to~~ ^{or to} retain
 23 counsel of the party's own choosing to petition for reconsideration or modification of the emergency guardianship under
 24 sub. 5. ~~The petitioner shall serve notice of the hearing on the persons specified in~~
 25 ~~sub. (3) (b) before the hearing or not later than 3 calendar days after the hearing~~

the child's
 children if 12 years of age or over, the child's guardian ad litem, and counsel,
 if any; the child's parents, guardian and legal custodian; and the
 person nominated as emergency guardian

1 If the petitioner serves notice of the hearing after the hearing is conducted and the
2 court has entered an order, the petitioner shall include the court's order with the
3 notice of the hearing.

for the child

4 3. The court shall appoint a guardian ad litem as soon as possible after the filing
5 of the petition. The court shall attempt to appoint the guardian ad litem before the
6 hearing on the petition, but may appoint the guardian ad litem after the hearing if
7 the court finds that exigent circumstances require the immediate appointment of an
8 emergency guardian. The guardian ad litem shall attempt to meet with the child
9 before the hearing or as soon as is practicable after the hearing, but not later than
10 3 calendar days after the hearing. The guardian ad litem shall report to the court
11 on the advisability of the emergency guardianship at the hearing or not later than
12 7 calendar days after the hearing.

petition
without a hearing

or, for good cause showing, may issue a temporary order ~~appointing~~ appointing an emergency guardian which

13 4. The court shall hold a hearing on the emergency guardianship as soon as
14 possible after the filing of the petition. If appointed prior to the hearing, the guardian
15 ad litem shall attend the hearing in person or by telephone.

shall remain in effect until a hearing is held on the emergency guardianship petition

16 5. If the court appoints an emergency guardian ~~and if the child has or has~~

17 ~~counsel, the guardian ad litem, or an interested person petition~~

18 or modification of the emergency guardianship, the court shall ~~order~~ ^{and} hold a rehearing on
19 the issue of appointment of the emergency guardian within 30 calendar days after
20 the filing of the petition.

21 (c) *Immunity.* An emergency guardian of a child is immune from civil liability
22 for his or her acts or omissions in performing the duties of emergency guardianship
23 if he or she performs the duties in good faith, in the best interests of the child, and
24 with the degree of diligence and prudence that an ordinarily prudent person
25 exercises in his or her own affairs.

1 (d) *Cessation of powers.* The duties and powers of the emergency guardian
 2 cease upon the expiration of the time period specified in par. (a), or the termination
 3 as determined by the court of the situation of the child that was the cause of the
 4 emergency guardianship. Upon cessation of an emergency guardianship, the
 5 emergency guardian shall file with the court any report that the court requires.

STET:
leave
as
typed

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

STET:
leave
as
typed

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

1 (7) SUCCESSOR GUARDIAN. (a) *Appointment*. If a guardian dies, is removed by
 2 order of the court, or resigns and the resignation is accepted by the court, the court,
 3 on its own motion or upon petition of any interested person, may appoint a competent
 4 and suitable person as successor guardian. The court may, upon request of any
 5 interested person or on its own motion, direct that ^{the} ~~a~~ ^{or motion} petition for the appointment of
 6 a successor guardian be heard in the same manner and subject to the same
 7 requirements as provided under this section for an original appointment of a
 8 guardian.

request the appointment of counsel or to retain counsel of the interested person's own choosing

9 (b) *Notice*. If the appointment under par. (a) is made without hearing, the
 10 successor guardian shall provide notice ~~to the child and~~ all interested persons ~~of the~~
 11 appointment, the right to ~~counsel~~, and the right to petition for reconsideration of the
 12 appointment of the successor guardian. The notice shall be served personally or by
 13 mail not later than 10 days after the appointment.

Insert 12-20-13

STET: leave as typed

14 (8) REVIEW OF CONDUCT OF GUARDIAN. (a) *Continuing jurisdiction of court*. The
 15 court that appointed the guardian of a child has continuing jurisdiction over the
 16 guardian.

17 (b) *Cause for court action against a guardian*. The court ^{may} ~~has cause to~~ impose
 18 a remedy under par. (d) if a guardian of a child does any of the following:

19 1. Abuses or neglects the child or knowingly permits others to do so.

20 2. Engages in self-dealing.

21 3. Fails to adequately provide for the personal needs of the child.

22 4. Fails to exercise due diligence and reasonable care in assuring that the
 23 child's personal needs are being met.

24 5. Fails to disclose information specified in sub. (3) (c) that would have
 25 prevented appointment of the person as guardian.

X
X
X
X

X 1 ~~6. Fails to permit reasonable visitation with the child.~~
 Y 2 (3) (1) Otherwise fails to perform any of his or her duties as a guardian under s.
 3 48.023. interested or other person approved by the court

(4) (c) Procedure. Any person may file a petition requesting a review of the conduct
 5 of a guardian or the court, on its own motion, may propose such a review. The request
 6 or court proposal shall allege facts sufficient to show cause under par. (b) for the court
 7 to impose a remedy under par. (d). The court shall hold a hearing on the request or
 8 proposal not more than 30 days after the filing of the request or proposal. Not less
 9 than 7 days before the date of the hearing, the court shall cause notice of the hearing
 10 to be provided to the child, his or her or parents, the guardian, and any other persons
 11 as determined by the court. A copy of the request or proposal shall be attached to the
 12 notice.

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

16 1. Remove the guardian.
 17 (3) (2) Enter any other order that may be necessary or appropriate to compel the
 18 guardian to carry out the guardian's duties, including an order setting reasonable
 19 rules of visitation with the child.

20 (5) (1) Require the guardian to pay any costs of the proceeding, including costs of
 21 service and attorney fees. if the court finds that the guardian's conduct
 22 was egregious

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

(4) Modify the duties and authority of the guardian.

(4) Remove the guardian and appoint a successor guardian

④ 1. The guardianship is for a lesser period of time and that time has expired.

1 ② ①. The child marries.

2 ③ ②. The child dies.

3 ④ ③. The ~~child changes~~ ^{child's} residence from this state to another state and a guardian is appointed in the new state of residence.

and a successor guardian is not appointed

5 ⑤ ④. The guardian resigns ^{and} the resignation is accepted by the court.

6 ⑥ ⑤. The guardian is removed for cause under sub. (6) (d) 1. ^{and a successor guardian is not appointed}

7 ⑦ ⑥. The court terminates the guardianship on the request of a parent of the child under par. (b).

9

(b) Termination on request of parent. 1. A parent of the child may file a petition requesting that a guardianship order entered under sub. (3) (f) 2. (4), (5), or (6) be terminated. The petition shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is fit, willing, and able to carry out the duties of a guardian, and that termination of the guardianship would be in the best interests of the child.

all interested persons

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

3. If a hearing is to be held, by no less than 7 days before the date of the hearing the court shall cause notice of the hearing to be provided to the child, his or her parents, the guardian, and any other persons as determined by the court. A copy of the request or proposal shall be attached to the notice. The court shall terminate the guardianship if the court finds that it has been proved by clear and convincing evidence that the parent has remedied the unfitness, unwillingness, or inability to

or (12), or has been adjudged delinquent under s. 938.12,

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

5 SECTION 18. 48.977 (2) (a) of the statutes is amended to read:

6 48.977 (2) (a) That the child has been adjudged to be in need of protection or
7 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or
8 (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her

9 home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365,
10 938.345, 938.357, 938.363, or 938.365 or, that the child has been so adjudged and
11 placement of the child in the home of a guardian under this section has been
12 recommended under s. 48.33 (1) or 938.33 (1), or that the child has had a guardian
13 of the person appointed for him or her under ch. 54, 2007 stats., or ch. 880, 2003
14 stats., and is placed in the home of the guardian.

15 SECTION 19. 48.977 (2) (f) of the statutes is amended to read:

16 48.977 (2) (f) That the agency primarily responsible for providing services to
17 the child under a court order has made reasonable efforts to make it possible for the
18 child to return to his or her home, while assuring that the child's health and safety
19 are the paramount concerns, but that reunification of the child with the child's
20 parent or parents is unlikely or contrary to the best interests of the child and that
21 further reunification efforts are unlikely to be made or are contrary to the best
22 interests of the child or that the agency primarily responsible for providing services
23 to the child under a court order has made reasonable efforts to prevent the removal
24 of the child from his or her home, while assuring the child's health and safety, but that
25 continued placement of the child in the home would be contrary to the welfare of the

Insert
23-14

938.34

1 child, except that the court is not required to find that the agency has made those
2 reasonable efforts with respect to a parent of the child if any of the circumstances
3 specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the
4 findings specified in this paragraph on a case-by-case basis based on circumstances
5 specific to the child and shall document or reference the specific information on
6 which those findings are based in the guardianship order. A guardianship order that
7 merely references this paragraph without documenting or referencing that specific
8 information in the order or an amended guardianship order that retroactively
9 corrects an earlier guardianship order that does not comply with this paragraph is
10 not sufficient to comply with this paragraph. This paragraph does not apply to a
child who is placed in the home of a guardian under ch. 54, 2007 stats., or ch. 880,
2003 stats., and who is not receiving services from an agency under a court order.

11
Insert
2412
12
13 SECTION 20. 48.977 (8) of the statutes is amended to read:

14 48.977 (8) RELATIONSHIP TO ~~CH. 54 AND CH. 880, 2003 STATS~~ OTHER GUARDIANSHIP
15 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian
16 appointed under s. 48.976, ch. 54, 2007 stats., or ch. 880, 2003 stats.

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

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

20 48.978 (7) RELATIONSHIP TO ~~CH. 54~~ OTHER GUARDIANSHIP PROCEDURES. (a) Except
21 when a different right, remedy, or procedure is provided under this section, the
22 rights, remedies, and procedures provided in s. 48.976 or ch. 54, whichever is
23 applicable, shall govern a standby guardianship created under this section.

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

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

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

to exceed

5 **48.979 Delegation of power by parent, guardian, or legal custodian.** A
6 parent, guardian, or legal custodian of a child, by a properly executed power of
7 attorney, may delegate to another person, for a period not ~~exceeding~~
8 of his or her powers regarding the care and custody of the child, except the power to
9 consent to the marriage or adoption of the child.

10 SECTION 23. 49.32 (1) (am) of the statutes is amended to read:

11 49.32 (1) (am) Paragraph (a) does not prevent the department or a county
12 department under s. 46.22 or 46.23 from charging and collecting the cost of adoptive
13 placement investigations and child care as authorized under s. 48.837 (7) or the cost
14 of guardianship investigations as authorized under s. 48.976 (3) (d) 2.

15 SECTION 24. 51.30 (4) (b) 18. a. of the statutes is amended to read:

16 51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62
17 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
18 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
19 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
20 or for whom a guardian ~~of the person~~ is appointed under, ~~or~~ s. 48.976 ~~or~~ 54.10/2007

21 ~~stats~~ or s. 880.33, 2003 stats.

22 SECTION 25. 51.30 (4) (b) 18. c. of the statutes is amended to read:

23 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed
24 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with
25 developmental disability who has a parent or has a guardian appointed under s.

1 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33,
2 2003 stats., information concerning the patient that is obtainable by staff members
3 of the agency or nonprofit corporation with which the agency has contracted is
4 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,
5 if any; the name, birth date and county of residence of the patient; information
6 regarding whether the patient was voluntarily admitted, involuntarily committed
7 or protectively placed and the date and place of admission, placement or
8 commitment; and the name, address and telephone number of the guardian of the
9 patient and the date and place of the guardian's appointment or, if the patient is a
10 minor with developmental disability who has a parent or has a guardian appointed
11 under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or
12 s. 880.33, 2003 stats., the name, address and telephone number of the parent or
13 guardian appointed under s. 48.831 of the patient.

14 **SECTION 26.** 54.01 (10) of the statutes is amended to read:

15 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to
16 manage the income and assets and provide for the essential requirements for health
17 and safety and the personal needs of ~~a minor~~, an individual found incompetent, or
18 a spendthrift or to manage the income and assets of a minor.

19 **SECTION 27.** 54.10 (1) of the statutes is amended to read:

20 54.10 (1) A court may appoint ~~a guardian of the person or~~ a guardian of the
21 estate, ~~or both~~, for an individual if the court determines that the individual is a
22 minor. Except as provided in ss. 48.831, 48.977, and 48.978, an appointment of a
23 guardian of the person of a minor shall be conducted under the procedures specified
24 in s. 48.976.

25 **SECTION 28.** 54.52 (1) of the statutes is amended to read:

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

9 **SECTION 29.** 54.56 of the statutes is renumbered 48.976 (11) and amended to
10 read:

11 48.976 (11) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS. (a)

12 In this section subsection, "stepparent" means the surviving spouse of a deceased
13 parent of a minor child, whether or not the surviving spouse has remarried.

14 (b) If one or both parents of a minor child are deceased and the minor child is
15 in the custody of the surviving parent or any other person, a grandparent or
16 stepparent of the minor child may petition for visitation privileges with respect to the
17 minor child, whether or not the person with custody is married. The grandparent
18 or stepparent may file the petition in a guardianship or temporary guardianship
19 proceeding under this chapter section that affects the minor child or may file the
20 petition to commence an independent action under this chapter subsection. Except
21 as provided in sub. (3m) par. (cm), the court may grant reasonable visitation
22 privileges to the grandparent or stepparent if the surviving parent or other person
23 who has custody of the minor child has notice of the hearing and if the court
24 determines that visitation is in the best interest of the minor child.

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

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

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

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

16 (dm) 1. If a grandparent or stepparent granted visitation privileges with
17 respect to a ~~minor~~ child under this ~~section~~ subsection is convicted under s. 940.01 of
18 the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
19 intentional homicide, of a parent of the ~~minor~~ child, and the conviction has not been
20 reversed, set aside, or vacated, the court shall modify the visitation order by denying
21 visitation with the ~~minor~~ child upon petition, motion, or order to show cause by a
22 person having custody of the ~~minor~~ child, or upon the court's own motion, and upon
23 notice to the grandparent or stepparent granted visitation privileges.

24 2. ~~Paragraph (a)~~ Subdivision 1. does not apply if the court determines by clear
25 and convincing evidence that the visitation would be in the best interests of the ~~minor~~

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

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

6 **SECTION 30.** 54.57 of the statutes is renumbered 48.976 ¹² (11) and amended to
7 read:

8 48.976 ¹² (11) ^(B) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF ~~A~~ PARENT KILLS
9 OTHER PARENT. (a) Except as provided in sub. (2), ~~in an action under this chapter that~~
10 ~~affects a minor par. (b)~~, a court may not grant to a parent of the minor a child who
11 is the subject of a proceeding under this section visitation or physical placement
12 rights with the minor child if the parent has been convicted under s. 940.01 of the
13 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
14 homicide, of the minor's child's other parent, and the conviction has not been
15 reversed, set aside, or vacated.

16 (b) ~~Subsection (1) Paragraph (a)~~ does not apply if the court determines by clear
17 and convincing evidence that visitation or periods of physical placement would be in
18 the best interests of the minor child. The court shall consider the wishes of the minor
19 child in making the determination.

20 **SECTION 31.** 55.03 (1) of the statutes is amended to read:

21 55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting
22 as a guardian appointed under s. 48.976, ch. 880, 2003 stats., or ch. 54, 2007 stats.,
23 may be a provider of protective services or protective placement for its ward under
24 this chapter.

25 **SECTION 32.** 55.10 (4) (intro.) of the statutes is amended to read:

1 55.10 (4) RIGHTS. (intro.) Sections 54.42, 54.44, and 54.46 and the following
2 provisions apply to all hearings under this chapter involving protective placement
3 or protective services for an adult, and s. 48.976 and the following provisions apply
4 to all hearings under this chapter involving protective placement or protective
5 services for a minor, except transfers of placement under s. 55.15 and summary
6 hearings under ss. 55.18 (3) (d) and 55.19 (3) (d):

7 **SECTION 33.** 55.10 (4) (a) of the statutes is amended to read:

8 55.10 (4) (a) *Counsel.* The individual sought to be protected has the right to
9 counsel whether or not the individual is present at the hearing on the petition. The
10 court shall require representation by full legal counsel whenever the petition alleges
11 that the individual is not competent to refuse psychotropic medication under s. 55.14,
12 the individual sought to be protected requested such representation at least 72 hours
13 before the hearing, the guardian ad litem or any other person states that the
14 individual sought to be protected is opposed to the petition, or the court determines
15 that the interests of justice require it. If the individual sought to be protected or any
16 other person on his or her behalf requests but is unable to obtain legal counsel, the
17 court shall refer the individual to the state public defender as provided under s.
18 55.105 for appointment of legal counsel. If the individual sought to be protected is
19 represented by counsel appointed under s. 977.08 in a proceeding for the
20 appointment of a guardian under s. 48.976 or ch. 54, the court shall order the counsel
21 appointed under s. 977.08 to represent under this section the individual sought to
22 be protected.

23 **SECTION 34.** 115.76 (12) (b) 2. of the statutes is amended to read:

24 115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was
25 made a ward of the state, county, or child welfare agency under ch. 54, 2007 stats.,

1 or ch. 880, 2003 stats., or if a child has been placed in the legal custody or
2 guardianship of the state, county, or child welfare agency under ch. 48 or ~~ch.~~ 767.

3 **SECTION 35.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

4 146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62
5 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
6 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
7 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
8 or for whom a guardian ~~of the person~~ is appointed under s. ~~48.976 or 54.10~~ ^{scored} 54.10 ~~2003~~
9 ~~stats.~~ or s. 880.33, 2003 stats.

10 **SECTION 36.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

11 146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed
12 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with
13 developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a
14 guardian appointed under s. 48.831 and does not have a guardian appointed under
15 s. 48.976 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that
16 is obtainable by staff members of the agency or nonprofit corporation with which the
17 agency has contracted is limited, except as provided in subd. 9. e., to the nature of
18 an alleged rights violation, if any; the name, birth date and county of residence of the
19 patient; information regarding whether the patient was voluntarily admitted,
20 involuntarily committed or protectively placed and the date and place of admission,
21 placement or commitment; and the name, address and telephone number of the
22 guardian of the patient and the date and place of the guardian's appointment or, if
23 the patient is a minor with developmental disability who has a parent or has a
24 guardian appointed under s. 48.831 and does not have a guardian appointed under

1 s. 48.976 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number
2 of the parent or guardian appointed under s. 48.831 of the patient.

3 **SECTION 37.** 214.37 (4) (k) 1. of the statutes is amended to read:

4 214.37 (4) (k) 1. An affidavit stating that the person has standing under s.
5 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment
6 of a decedent's estate or that the person is an heir of the decedent, or was guardian,
7 as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the decedent
8 at the time of the decedent's death, and may obtain transfer of property of a decedent
9 under s. 867.03.

10 **SECTION 38.** 215.26 (8) (e) 1. of the statutes is amended to read:

11 215.26 (8) (e) 1. Submits an affidavit stating that the person has standing
12 under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or
13 assignment of a decedent's estate or that the person is an heir of the decedent, or was
14 guardian, as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the
15 decedent at the time of the decedent's death, and may obtain transfer of property of
16 a decedent under s. 867.03; and

17 **SECTION 39.** 757.69 (1m) (e) of the statutes is amended to read:

18 757.69 (1m) (e) Conduct hearings, make findings, or issue orders in
19 proceedings under s. 48.976, 48.977, or 48.978.

20 **SECTION 40.** 808.075 (4) (a) 9m. of the statutes is created to read:

21 808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.976 (9).

22 **SECTION 41.** 808.075 (4) (a) 11. of the statutes is amended to read:

23 808.075 (4) (a) 11. Termination of guardianship under s. 48.976 (10) or 48.977
24 (7), including removal of a guardian. e 9
2-10

25 **SECTION 42.** 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 (7).

2 SECTION 43. 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 (1).

5 SECTION 44. 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 (2), whether in a
7 guardianship or temporary guardianship proceeding or to commence an
8 independent action, \$60.

9 SECTION 45. 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.

12 SECTION 46. 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.

17 SECTION 47. Nonstatutory provisions.

or ~~under~~ chapter 880, 2003
stats.,

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 immediately before the effective date of this subsection
21 remain in effect and shall be considered guardianships under section 48.976 of the
22 statutes, as created by this act, until terminated by court order under section 48.976
23 (9) of the statutes, as created by this act, all matters commenced under ch. 54, 2007
24 stats., with respect to a guardianship of the person of a minor that are pending on
25 the effective date of this subsection shall be completed under ch. 54, 2007 stats., and

Insert
33-11

Insert
33-16

10

1 all orders appointing a guardian of the person of a minor under ch. 54, 2007 stats.,
2 entered beginning on the effective date of this subsection shall be considered
3 guardianships under section 48.976 of the statutes, as created by this act.

4 **SECTION 48. Initial applicability.**

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

8 (2) DUTIES AND AUTHORITY OF GUARDIAN OF THE PERSON. The treatment of sections
9 48.023 (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 49. 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)

Fix component
no ff

(NO P)

↑ except as follows:

(P)

(1) **TREATMENT FOSTER HOMES.**

The repeal and recreation

& sections 48.62 (2) and 938.34 (3) (c) of the statutes
takes effect on the date stated in the notice provided by the
secretary of children and families and published in the Wisconsin
Administrative Register under section 48.62 (9) of the statutes.

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0893/P3ins
GMM.....

(INSERT 6-19)

Δ....Δ

1 SECTION 1. 48.62 (2) of the statutes, as affected by 2009 Wisconsin Acts 28 and
2 (this act), is repealed and recreated to read:

3 48.62 (2) A relative or a guardian of a child who provides care and maintenance for the
4 child is not required to obtain the license specified in this section. The department, county
5 department, or licensed child welfare agency as provided in s. 48.75 may issue a license to operate
6 a foster home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests a
7 license to operate a foster home for a specific child who is either placed by court order or who is
8 the subject of a voluntary placement agreement under s. 48.63. The department, a county
9 department, or a licensed child welfare agency may, at the request of a guardian appointed under
10 s. 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the guardian's home
11 as a foster home for the guardian's minor ward who is living in the home and who is placed in the
12 home by court order. Relatives with no duty of support and guardians appointed under s. 48.976,
13 48.977, or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., who are licensed to operate foster
14 homes are subject to the department's licensing rules.

change
text
to
New
Century
Schoolbook
12pt

(END OF INSERT)

PLAIN

(INSERT 13-21)

no 9

15 manner specified in s. 48.028 (4) (a). No hearing may be held under par. (d) until
16 at least 10 days after receipt of the notice by the Indian child's parent, Indian
17 custodian, and Indian tribe or, if the identity or location of the Indian child's parent,
18 Indian custodian, or tribe cannot be determined, until at least 15 days after receipt
19 of the notice by the U.S. secretary of the interior. On request of the Indian child's

1 parent, Indian custodian, or Indian tribe, the court shall grant a continuance of up
2 to 20 additional days to enable the requester to prepare for the hearing.

(END OF INSERT)

(INSERT 20-13)

) ← close paren

3 (8) MODIFICATION OF GUARDIANSHIP ORDER. (a) Any interested person or other
4 person approved by the court may request a modification of a guardianship order
5 entered under this subsection or sub. (3) (f) 2. or the court may, on its own motion,
6 propose such a modification. The request or motion shall set forth in detail the
7 nature of the proposed modification, shall allege facts sufficient to show that there
8 has been a substantial change in circumstances since the last order affecting the
9 guardianship was entered and that the proposed modification would be in the best
10 interests of the child, and shall allege any other information that affects the
11 advisability of the court's disposition.

12 (b) The court shall hold a hearing on the matter prior to any modification of the
13 guardianship order if the request or motion indicates that new information is
14 available that affects the advisability of the court's guardianship order, unless
15 written waivers of objections to the modification are signed by all interested persons
16 and the court approves the waivers.

17 (c) If a hearing is to be held, the court shall notify all interested persons at least
18 7 days prior to the hearing of the date, place, and purpose of the hearing. A copy of
19 the request or proposal shall be attached to the notice. The court may order a
20 modification if, at the hearing, the court finds that it has been proved by clear and

1 convincing evidence that there has been a substantial change in circumstances and
2 if the court determines that a modification would be in the best interests of the child.

(END OF INSERT)



(INSERT 23-14)

3 SECTION 2. 48.977 (2) (e) of the statutes is amended to read:

4 48.977 (2) (e) That the child's parent is neglecting, refusing, or unable to carry
5 out the duties of a guardian or is not meeting the conditions established in the court
6 order described in par. (a) for the safe return of the child to the home or, if the child
7 has 2 parents, both parents are neglecting, refusing or unable to carry out the duties
8 of a guardian those duties or are not meeting those conditions.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94.

(END OF INSERT)



(INSERT 24-12)

9 SECTION 3. 48.977 (4) (b) 3. of the statutes is amended to read:

10 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection
11 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or
12 (11m) or 938.13 (4) or (12), or was adjudicated delinquent under s. 938.12, and the
13 dates on which the child has been placed, or continued in a placement, outside of his
14 or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,
15 48.365, 938.34, 938.345, 938.357, 938.363, or 938.365; or, if the child has been so
16 adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1) in
17 which placement of the child in the home of the person is recommended; or, if the
18 child has had a guardian of the person appointed for him or her under ch. 54, 2007
19 stats., or ch. 880, 2003 stats., the date on which the child was placed in the home of
20 the guardian.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94.

as affected by 2009 Wisconsin Act 94

SECTION 4. 48.977 (4) (c) 2. of the statutes is amended to read:

48.977 (4) (c) 2. Except as provided in subd. 2m., service shall be made by 1st class mail at least 7 days before the hearing or by personal service at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or personal service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party. Service is considered to be made by proof that the petition and notice under subd. 1. were mailed to the last-known address of the recipient, by proof of personal delivery of that petition and notice, or, if the recipient is an adult, by the written admission of service of the person served.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94.

SECTION 5. 48.977 (4) (i) of the statutes is amended to read:

48.977 (4) (i) *Effect of disposition on permanency plan review process.* After a disposition under par. (h), the child's permanency plan shall continue to be reviewed under s. 48.38 (5) or 938.38 (5), if applicable required under s. 48.38 (2) or 938.38 (2).

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94.

(END OF INSERT)

(INSERT 33-11)

SECTION 6. 938.34 (3) (c) of the statutes is amended to read:

938.34 (3) (c) A foster home or treatment foster home licensed under s. 48.62 or, a group home licensed under s. 48.625, or in the home of a guardian under s. 48.977 (2).

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28.

Stat.
leave
as
typed

1 SECTION 7. 938.33 (c) of the statutes, as affected by 2009 Wisconsin Acts (28)

2 and (this act), is repealed and recreated to read:

3 938.33 (c) A foster home licensed under s. 48.62, a group home licensed under s.
4 48.625, or in the home of a guardian under s. 48.977 (2).

(END OF INSERT)

(INSERT 33-16)

5 SECTION 8. 938.345 (4) of the statutes is repealed.

(END OF INSERT)

(INSERT A)

INTRODUCTION

Current law permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to appoint a guardian of the person of a child under the Children's Code only under certain circumstances, including:

- ✓ 1. When a child does not have a living parent and a finding as to the adoptability of the child is sought.
- ✓ 2. When a child who has been adjudged to be in need of protection or services under the Children's Code, or adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of uncontrollability, and placed outside the home is likely to be placed in the home of the guardian for an extended period or until the child attains the age of 18 years, it is not in the best interests of the child that a petition for termination of parental rights be filed, and the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian (protection or services guardianship).
- ✓ 3. When a parent wishes to have a standby guardian appointed to assume the duties and authority of guardianship on the incapacity or debilitation of the parent.

Under any other circumstances, however, the chapter of the statutes governing guardianships generally, which include guardianships of the estates of children and guardianships of the persons and estates of adults who are found incompetent, govern a guardianship of the person of a child.

This bill removes guardianships of the persons of children from the chapter of the statutes governing guardianships generally and instead creates a new provision in the Children's Code that may be used for the appointment of a guardian of the person of a child. The bill also makes certain changes relating to protection or services guardianships and permits a parent, guardian, or legal custodian to delegate by a power of attorney his or her powers regarding the care and custody of a child.

Change
text
to
New Century
Schoolbook
12 pt

34

34
3

ment

✓ guardian. The order appointing a temporary guardian must specify the authority of
 ✓ the guardian, which must be limited to those acts that are reasonably related to the
 ✓ reasons for the appointment as specified in the petition for temporary guardianship.
 ✓ A temporary guardianship may not exceed 180 days, but may be extended for one
 ✓ additional 180-day period for good cause shown. A temporary guardianship ceases
 ✓ on expiration of that period or on termination of the situation of the child that was
 ✓ the cause of the temporary guardianship.

✓ **Emergency guardianships.** Under the bill, the juvenile court may appoint
 ✓ a guardian to be a child's emergency guardian when the child's welfare requires the
 ✓ immediate appointment of an emergency guardian. The order appointing an
 ✓ emergency guardian must specify the authority of the guardian, which must be
 ✓ limited to those acts that are reasonably related to the reasons for the appointment
 ✓ as specified in the petition for emergency guardianship. An emergency guardianship
 ✓ may not exceed 60 days and ceases on expiration of that period or on termination of
 ✓ the situation of the child that was the cause of the emergency guardianship.

Procedures for appointment of full, limited, or temporary guardian

✓ **Petition.** Any person, including a child 12 years of age or over on his or her own
 ✓ behalf, may petition for the appointment of a guardian of a child. The petitioner must
 ✓ cause the petition and notice of the time and place of the hearing on the petition to
 ✓ be served upon all interested persons, as defined in the bill, unless notice is waived
 ✓ by an interested person or by the juvenile court for good cause shown.

For purposes of a petition for guardianship of a child, "interested person"
 means: 1) the child, if 12 years of age or over, the child's guardian ad litem, and the
 child's counsel; 2) the child's parent, current guardian, legal custodian, and physical
 custodian; 3) if the child is a nonmarital child whose parents have not intermarried
 and if paternity of the child has not been established, any person who has filed a
 declaration of parental interest and any person who is alleged to be, or who may be,
 the father of the child; 4) the individual who is nominated as the guardian; 5) if the
 child has no living parent, any individual nominated to act as fiduciary for the child
 in a will or other written instrument executed by a parent of the child; 6) if the child
 is receiving any public services or benefits, the county department of human services
 or social services (county department) or, in Milwaukee County, the Department of
 Children and Families (DCF); 7) if the child is an Indian child, the child's Indian
 custodian and tribe; and 8) any other person that the juvenile court may require.

✓ **Guardian ad litem.** The juvenile court must appoint a guardian ad litem
 (GAL) for a child who is the subject of a guardianship proceeding. In addition to his
 or her general duty to advocate for the best interests of the child, a GAL appointed
 for a child who is the subject of a guardianship proceeding must, unless granted leave
 by the juvenile court not to do so, do all of the following:

- ✓ 1. Personally, or through a trained designee, meet with the child, assess the
 ✓ appropriateness and safety of the environment of the child, and, if appropriate to the
 ✓ age and developmental level of the child, interview the child and determine the
 ✓ child's goals and concerns regarding the proposed guardianship. If the child is 12
 ✓ years of age or over, the GAL must also advise the child that he or she may request

✓
 ✓
 ←
 ✓
 ✓
 ✓
 ✓
 ✓
 ✓



✓ the appointment of counsel or retain counsel of his or her own choosing to oppose the guardianship petition.

✓ 2. Interview the proposed guardian, personally or through a trained designee, visit the guardian's home, if appropriate, and report to the juvenile court concerning the suitability of the proposed guardian to serve as guardian of the child.

✓ 3. Attend all juvenile court proceedings relating to the guardianship, present evidence concerning the best interests of the child, if necessary, and make clear and specific recommendations to the juvenile court concerning the best interests of the child at every stage of the guardianship proceeding.

✓ **Statement by proposed guardian.** At least 96 hours before the hearing on the petition, the proposed guardian must submit to the juvenile court a sworn and notarized statement as to the number of persons for whom the proposed guardian is responsible, whether as a parent, guardian, or legal custodian, as to the proposed guardian's income, assets, debts, and living expenses, and as to whether the proposed guardian is currently charged with or has been convicted of a crime or has been determined under the child abuse and neglect reporting law to have abused or neglected a child.

✓ **Hearing.** The initial hearing on a guardianship petition must be heard within 30 days after the filing of the petition. If the petition is not contested, the juvenile court must immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested or an adjournment is requested, the juvenile court must set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing.

✓ If the petition is contested, if any interested person requests, or on the juvenile court's own motion, the juvenile court may order the county department, a licensed child welfare agency, or, in Milwaukee County, DCF or an agency under contract with DCF to conduct an investigation to determine whether the child is a proper subject for guardianship and whether the proposed guardian's home is suitable for the child. The person conducting the investigation must file a report of the investigation with the juvenile court at least 96 hours before the fact-finding and dispositional hearing, and the parents of the child and the proposed guardian must reimburse that person for the cost of the investigation according to a fee schedule established by DCF based on ability to pay.

✓ The proposed guardian and any standby guardian, which is a person designated to become guardian on the death, unwillingness or inability to act, resignation, or removal of the guardian or to act as guardian during a period of temporary inability of the guardian to fulfill his or her duties, must be physically present at the hearing, unless excused by the juvenile court or the juvenile court permits attendance by telephone. The child is not required to attend the hearing, but ✓ if the child has nominated the guardian, the child must provide to his or her GAL sufficient information for the GAL to advise the juvenile court whether the ✓ nomination is in the best interests of the child. Any other interested person may participate in the hearing if the juvenile court determines that the interested person ✓ is a necessary party.

Dispositional factors. In determining the appropriate disposition of a guardianship petition, the juvenile court must consider all of the following factors:

- ✓ 1. Any nomination of a guardian made by a parent or by the child, if 12 years of age or over, and the opinions of the parents and child as to what is in the best interests of the child.
- ✓ 2. Whether the proposed guardian would be fit, willing, and able to serve as the guardian of the child.
- ✓ 3. If the child is an Indian child, the order of placement preference required for an Indian child in an Indian child custody proceeding, unless the juvenile court finds good cause for departing from that order.
- ✓ 4. Whether appointment of the proposed guardian is in the best interests of the child.

Disposition. At the conclusion of the fact-finding and dispositional hearing, the juvenile court must either: 1) dismiss the petition if the juvenile court determines that the allegations in the petition have not been proved by clear and convincing evidence or that appointment of the proposed guardian is not in the best interests of the child; or 2) order the proposed guardian to be appointed as the child's guardian if the juvenile court determines that those allegations have been so proved and that the appointment is in the best interests of the child. A disposition ordering the appointment of a guardian may also designate an amount of support to be paid by the child's parents and may include reasonable rules of parental visitation.

Went

Procedures for appointment of emergency guardian

Petition. Any person may petition for the appointment of an emergency guardian for a child. The petitioner must give notice of the petition and of the time and place of the hearing on the petition to the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel, if any; the child's parents, guardian, and legal custodian; and the person nominated as emergency guardian. Notice of the petition and a copy of the petition must be served by the most practical means possible, including personal service or service by electronic mail or telephone, as soon after the filing of the petition as possible and must include notice of the right to counsel and of the right to petition for reconsideration or modification of the emergency guardianship.

GAL. The juvenile court must appoint a GAL for the child as soon as possible after the filing of the petition and must attempt to appoint the GAL before the hearing on the petition, but may appoint the GAL after the hearing if exigent circumstances require the immediate appointment of an emergency guardian. The GAL must attempt to meet with the child before the hearing or as soon as is practicable after the hearing, but not later than three days after the hearing, and must report to the juvenile court on the advisability of the emergency guardianship at the hearing or not later than seven days after the hearing.

Hearing. The juvenile court must hold a hearing on the emergency guardianship petition as soon as possible after the filing of the petition or, for good cause shown, may issue a temporary order appointing an emergency guardian without a hearing, which remains in effect until a hearing is held on the petition. If the juvenile court appoints an emergency guardian, any person entitled to receive

notice of the emergency guardianship petition may petition for reconsideration or modification of the emergency guardianship and the juvenile court must hold a rehearing on the issue of appointment of the emergency guardian within 30 days after the filing of the petition.

Immunity. An emergency guardian of a child is immune from civil liability for his or her acts or omissions in performing the duties of emergency guardianship if he or she performs the duties in good faith, in the best interests of the child, and with the degree of diligence and prudence that an ordinarily prudent person exercise in his or her own affairs.

Post-appointment procedures

Successor guardian. If a guardian dies, is removed by order of the juvenile court, or resigns and the resignation is accepted by the juvenile court, the juvenile court may appoint a competent and suitable person as successor guardian. The appointment may be made on the juvenile court's own motion or on the petition of any interested person, which, for purposes of proceedings subsequent to an order for guardianship of a child, means: 1) the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel; 2) the guardian; 3) the child's parents; 4) the county of venue, if the county has an interest in the guardianship; 5) if the child is an Indian child, the child's tribe; and 6) any other person that the juvenile court may require.

A successor guardian may be appointed without a hearing, but the juvenile court may, upon request of any interested person or on its own motion, direct that the petition or motion for the appointment of the successor guardian be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian. If a successor is appointed without a hearing, the successor guardian must provide notice to all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the appointment.

Modification of guardianship order. Any interested person or other person approved by the juvenile court may request a modification of a guardianship order or the juvenile court may, on its own motion, propose such a modification. The request or motion must set forth in detail the nature of the proposed modification, allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed modification would be in the best interests of the child, and allege any other information that affects the advisability of the juvenile court's disposition. The juvenile court must hold a hearing on the matter prior to any modification of the guardianship order if the request or motion indicates that new information is available that affects the advisability of the juvenile court's guardianship order, unless written waivers of objections to the modification are signed by all interested persons and the juvenile court approves the waivers. The juvenile court may order a modification if, at the hearing, the juvenile court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and if the juvenile court determines that a modification would be in the best interests of the child.

Review of conduct of guardian. The juvenile court that appointed the guardian of a child has continuing jurisdiction over the guardian and may impose certain remedies if the guardian abuses or neglects the child or knowingly permits others to do so, fails to disclose information that would have prevented his or her appointment as guardian, or otherwise fails to perform any of his or her duties as guardian. If the juvenile court finds by clear and convincing evidence that any of those circumstances apply, the juvenile court may remove the guardian, remove the guardian and appoint a successor guardian, enter any other order that may be necessary or appropriate to compel the guardian to carry out his or her duties, modify the duties and authority of the guardian, or, if the guardian's conduct was egregious, require the guardian to pay any costs of the proceeding.

Termination of guardianship. A guardianship continues until the child attains the age of 18 years unless: 1) the guardianship is for a lesser period of time and that time has expired; 2) the child marries; 3) the child dies; 4) the child's residence changes from this state to another state and a guardian is appointed in ~~the~~ ^{the} new state of residence; 5) the guardian dies, or resigns and the resignation is approved by the juvenile court, and a successor guardian is not appointed; 6) the guardian is removed for cause and a successor guardian is not appointed; or 7) the guardianship is terminated on the request of a parent.

A parent may request that a guardianship be terminated by filing a petition with the juvenile court alleging facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is fit, willing, and able to carry out the duties of a guardian, and that termination of the guardianship would be in the best interests of the child. The juvenile court must hold a hearing on the petition, unless written waivers of objections to termination of the guardianship are signed by all interested persons and the juvenile court approves the waivers. The juvenile court must terminate the guardianship if the juvenile court finds that it has been proved by clear and convincing evidence that the parent has remedied the unfitness, unwillingness, or inability to provide for the care, custody, and control of the child or the compelling facts and circumstances on which the guardianship was granted and that the parent is now fit, willing, and able to carry out the duties of a guardian and if the juvenile court determines that termination of the guardianship would be in the best interests of the child.

Protection or services guardianships

Under the current Children's Code, a protection or services guardianship may be ordered when a child who has been adjudged to be in need of protection or services under the Children's Code, or adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of uncontrollability, and placed outside the home is likely to be placed in the home of the guardian for an extended period or until the child attains the age of 18 years, it is not in the best interests of the child that a petition for termination of parental rights be filed, and the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian.

This bill expands the applicability of a protection or services guardianship to include a child under 10 years of age who has been adjudged to be in need of

10
ten

give notice to

ten

✓ protection or services under the Juvenile Justice Code on the grounds of having
✓ committed a delinquent act and a child 10 years of age or over who has been adjudged
✓ delinquent. The bill also permits such a guardianship to be ordered not only when
✓ the child's parent is neglecting, refusing, or unable to carry out the duties of a
✓ guardian but also when the child's parent is not meeting the conditions established
✓ in a juvenile court order for the safe return of the child to the home.

Under current law, service of a petition for a protection or services guardianship and notice of hearing on the petition may be made by 1st class mail, by personal service or, if with reasonable diligence a party cannot be served by mail or by personal service, by publication of the notice in a newspaper that is likely to reach the parties. This bill eliminates service by publication for a protection or services guardianship petition.

Delegation of power by parent, guardian, or legal custodian

Finally, the bill permits a parent, guardian, or legal custodian of a child, by a properly executed power of attorney, to delegate to another person, for a period not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child.

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

(END OF INSERT)

INSERT
SPACE
between
components
here

Malaise, Gordon

From: Hafner, Dyann [Hafner@co.dane.wi.us]
Sent: Monday, February 01, 2010 4:23 PM
To: Malaise, Gordon; HJPLUM@aol.com; Theresa Roetter; Jasmer, Molly; mike.vruno@milwcnty.com
Subject: RE: Guardianships of Children Bill Draft

By in large the proposed legislation looks pretty good. Here's my comments:

1. Under section 18 of the proposed bill, section 48.976(1)(a), Stats., will require service on the child's counsel. But I don't see where the child is required to have counsel under section 48.23. Are we saying that a child is not entitled to counsel unless privately retained? If the child is appointed a public defender, that action has already commenced and the court has sent over the pleadings. I think in the rare situation where the child has privately retained counsel, service on the child should be sufficient and the attorney then files a Notice of Appearance once retained. I would suggest taking out service on counsel because its not necessary and more likely to create troublesome situations. *counsel + G-PL, if any*
2. Also under section 18, section 48.976(1)(a)3., Stats., will require service on presumptive dads. The subsection refers to 48.27(3)(b)1., which refers to serving presumptive fathers where a CHIPS action has been filed. I think subsection 3. needs to not refer to s. 48.27(3)(b)1., but rather insert subsections a. and b. of 48.27(3)(b)1. in full while omitting the text in the (b)1. subsection. *set forth verbatim 48.27(3) (b)1. a. + b. keep for now*
3. I'm pretty sure that counties will view section 18, creating section 48.976(d)2. (p. 22), as an unfunded mandate. Further, I would argue that it is not the role of County Departments of Social/Human Services to investigate whether a child "is a proper subject for guardianship and whether the proposed guardian's home is suitable." Departments of Social/Human Services, being governmental bodies, determine rather whether a child requires Human Services intervention because of abuse or neglect situations under grounds set out in Chapter 48. If the Court determines that this is the case, the Court can request services under sections 48.06, 48.067, 48.069 and 48.07, Stats. Since a child can be a proper subject for guardianship without abuse or neglect having occurred, the departments may find themselves in the midst of custody battles, which would be more of the work of Family Court Counseling services. I respectfully request that the proposed section 48.76(d)2. be deleted.
4. I'm not clear why the court needs to present the guardian with letters under seal as proposed in new section 48.967(3) (f)2. (p. 24). I don't think "under seal" is necessary. *delete seal*
5. Under the procedures for a parent to terminate a guardianship, it is clear that a parent must allege sufficient facts to show a substantial change in circumstances; (and from experience I predict that parents' petitions will not commonly set out specific allegations.) What is not clear in section 48.27(10)(b)3. is whether the parent or guardian/state/county will have the burden or proof and/or persuasion. I think the parent should at least have the burden of putting forth evidence, if not the burden of persuasion. *parent has burden*
6. Shouldn't sections 51 and 52 of the proposed bill (p. 43) also contain a guardian appointed under s. 48.976? *48.345 (3)(a) 48.34 (3)(a) add guardian*

Except for #3. above, these comments are fairly fussy. Thanks to everyone for all their work.

Dyann Hafner
Assistant Corporation Counsel for Dane County
(608) 242-6483

-----Original Message-----

From: Malaise, Gordon [mailto:Gordon.Malaise@legis.wisconsin.gov]
Sent: Monday, January 25, 2010 11:03 AM
To: HJPLUM@aol.com; Theresa Roetter; Jasmer, Molly; Hafner, Dyann; mike.vruno@milwcnty.com
Subject: Guardianships of Children Bill Draft

<<09-0893/P3>>

Subcommittee Members:

At long last, attached is the redraft of the guardianships of children draft. Please review, discuss among yourselves, and get back to me with any final changes. If you have any questions about the draft or would like to schedule a meeting to discuss the draft, please reply to this e-mail or give me a call at (608) 266-9738.

Gordon

Malaise, Gordon

From: Theresa Roetter [troetter@annenroetter.com]
Sent: Sunday, March 21, 2010 1:41 PM
To: 'Theresa Roetter'; HJPLUM@aol.com; mike.vruno@milwcnty.com; Malaise, Gordon; mjasmer@waukeshacounty.gov; hafner@co.dane.wi.us
Subject: Meeting: Juvenile Guardianship Draft; Monday, March 29, 2010 at 1:00 p.m.

This will confirm that the Juvenile Guardianship Study Committee will meet at follows:

Monday, March 29, 2010
1:00 p.m.
211 S. Paterson Street, Suite 340
Madison, WI

Please try to look at the draft prior to the meeting and, if possible, send an email to the committee with your comments. We already have Dyann's.

See you all in a week!

- Theresa

Atty. Theresa L. Roetter
Annen Roetter, LLC
211 S. Paterson Street, Suite 340
Madison, WI 53703
Phone: 608.251.6700
Fax: 608.251.6725
www.annenroetter.com

The information in this email is confidential and may be protected by the attorney's work product doctrine. It is intended solely for the addressee; access to anyone else is unauthorized. If this message has been sent to you in error, please reply to the sender and then delete it. Your cooperation is appreciated.

From: Theresa Roetter [mailto:troetter@annenroetter.com]
Sent: Thursday, March 18, 2010 2:22 PM
To: HJPLUM@aol.com; Theresa L. Roetter; mike.vruno@milwcnty.com; 'Malaise, Gordon'; mjasmer@waukeshacounty.gov; hafner@co.dane.wi.us
Subject: Juvenile Guardianship Draft

Hi, there –

I hope this note finds you well! I'm writing to coordinate a committee meeting to discuss the draft of the juvenile guardianship bill one final time before we circulate it for review and sponsorship. Dyann has provided written comments but I have not, yet, seen any others.

Gordon has indicated that he would like to have written comments in advance of the meeting from all of us.

I am happy to host the meeting – I promise cookies and soda – if you'd like to come to my offices (free parking and only one turn off E. Washington Ave.; no circling the Capitol required) or we could meet at the State Bar center.

Please let me know your preference among the following dates and your preference for location:

Friday, March 26 – 1:00 p.m.
Monday, March 29 – 1:00 p.m.

03/29/2010

Friday, April 9 – 1:00 p.m.

Thanks,

- Theresa

Atty. Theresa L. Roetter
Annen Roetter, LLC
211 S. Paterson Street, Suite 340
Madison, WI 53703
Phone: 608.251.6700
Fax: 608.251.6725
www.annenroetter.com

The information in this email is confidential and may be protected by the attorney's work product doctrine. It is intended solely for the addressee; access to anyone else is unauthorized. If this message has been sent to you in error, please reply to the sender and then delete it. Your cooperation is appreciated.