



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 09B of 09

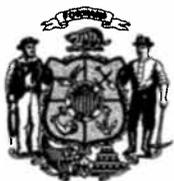
 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/08/2006 (Per: GMM)



 Appendix A ... Part 02 of 12

 The 2005 drafting file for LRB 05-4299

has been transferred to the drafting file for

2007 LRB 07-0174

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

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statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105; 2005 a. 42.

As a matter of judicial administration, the supreme court mandates procedures for withdrawal of a juvenile's jury demand. In Interest of N.E. 122 Wis. 2d 198, 361 N.W.2d 693 (1985).

A fact-finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. In Interest of C.M.L. 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by s. 48.13 (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890, 01-2325.

48.315 Delays, continuances and extensions. (1)

The following time periods shall be excluded in computing time requirements within this chapter:

(a) Any period of delay resulting from other legal actions concerning the child or the unborn child and the unborn child's expectant mother, including an examination under s. 48.295 or a hearing related to the mental condition of the child, the child's parent, guardian or legal custodian or the expectant mother, prehearing motions, waiver motions and hearings on other matters.

(b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and his or her counsel or of the unborn child by the unborn child's guardian ad litem.

(c) Any period of delay caused by the disqualification of a judge.

(d) Any period of delay resulting from a continuance granted at the request of the representative of the public under s. 48.09 if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at the later date, or to allow him or her additional time to prepare the case and additional time is justified because of the exceptional circumstances of the case.

(e) Any period of delay resulting from the imposition of a consent decree.

(f) Any period of delay resulting from the absence or unavailability of the child or expectant mother.

(fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension hearing

under s. 48.365 due to the child having run away or otherwise having made himself or herself unavailable to receive that notice.

(g) A reasonable period of delay when the child is joined in a hearing with another child as to whom the time for a hearing has not expired under this section if there is good cause for not hearing the cases separately.

(h) Any period of delay resulting from the need to appoint a qualified interpreter.

(i) A reasonable period of delay in a child custody proceeding when the child is or may be an Indian child and the Indian custodian or Indian tribe of the child requests additional time to determine if the child is an Indian child or if the tribe wishes to assume jurisdiction of the case.

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

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties, the request of the Indian custodian or Indian tribe or potential Indian tribe of a child, and the interest of the public in the prompt disposition of cases.

(2m) (a) No continuance or extension of a time limit specified in this chapter may be granted and no period of delay specified in sub. (1) may be excluded in computing a time requirement under this chapter if the continuance, extension, or exclusion would result in any of the following:

1. The court making an initial finding under s. 48.21 (5) (b) 1., 48.355 (2) (b) 6., or 48.357 (2v) (a) 1. that reasonable efforts have been made to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or an initial finding under s. 48.21 (5) (b) 3., 48.355 (2) (b) 6r., or 48.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, more than 60 days after the date on which the child was removed from the home.

2. The court making an initial finding under s. 48.38 (5m) that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the child's permanency plan more than 12 months after the date on which the child was removed from the home or making any subsequent findings under s. 48.38 (5m) as to those reasonable efforts more than 12 months after the date of a previous finding as to those reasonable efforts.

(b) Failure to comply with any time limit specified in par. (a) does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with a time limit specified in par. (a), the

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court, while assuring the safety of the child, may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

History: 1977 c. 354; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98; 1997 a. 292; 2001 a. 16, 109.

A trial court's sua sponte adjournment of a fact-finding hearing beyond the 30-day limit due to a congested calendar constituted good cause under sub. (2) when the adjournment order was entered within the 30-day period. In *Matter of J.R.* 152 Wis. 2d 598, 449 N.W.2d 52 (Ct. App. 1989).

A court loses competence to exercise jurisdiction to extend an order when the hearing is not held within the 30-day period under s. 48.365 (6); the 30-day period may not be expanded by a continuance under s. 48.315 and the court's loss of competence cannot be waived. In *Interest of B.J.N.* 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

The period under sub. (1) (c) includes the time required to assign the new judge, send any required notices, notify the parties, and arrange for time on the court's calendar; applicable time limits for plea hearings apply after the assignment of the new judge. In *Interest of Joshua M.W.* 179 Wis. 2d 335, 507 N.W.2d 141 (Ct. App. 1993).

Under sub. (2), "on the record" does not require reporting by a court reporter. A clerk's minutes satisfy the requirement. *Waukesha County v. Darlene R.* 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996), 95-1697.

The benefits of a pretrial are universally recognized by bench and bar such that a court need not specify the factors supporting "good cause" for a continuance of the time limits under sub. (2). *Waukesha County v. Darlene R.* 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996), 95-1697.

Under sub. (1) (a), the time limits are tolled for an examination of a parent under s. 48.295. *Waukesha County v. Darlene R.* 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996), 95-1697.

The general time requirements of sub. (2) control all extensions of time under ch. 48. There are no provisions for waiver of time limits, and the only provisions for delays, continuances, and extensions are under this section. *State v. April O.* 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927, 99-2487.

48.317 Jeopardy. Jeopardy attaches:

- (1) In a trial to the court, when a witness is sworn.
- (2) In a jury trial, when the jury selection is completed and the jury sworn.

History: 1977 c. 354.

48.32 Consent decree. (1) (a) At any time after the filing of a petition for a proceeding relating to s. 48.13 or 48.133 and before the entry of judgment, the judge or a circuit court commissioner may suspend the proceedings and place the child or expectant mother under supervision in the home or present placement of the child or expectant mother. The court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian, to the child expectant mother and her parent, guardian or legal custodian or to the adult expectant mother, including the condition specified in sub. (1b). The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older, the parent, guardian or legal custodian, and the person filing the petition under s. 48.25; by the child expectant mother, her parent, guardian or legal custodian, the unborn child by the unborn child's guardian ad litem and the person filing the

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petition under s. 48.25; or by the adult expectant mother, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25. The consent decree shall be reduced to writing and given to the parties.

(b) 1. If at the time the consent decree is entered into the child is placed outside the home under a voluntary agreement under s. 48.63 or is otherwise living outside the home without a court order and if the consent decree maintains the child in that placement or other living arrangement, the consent decree shall include a finding that placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

2. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the consent decree shall include a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge or circuit court commissioner shall make the findings specified in subds. 1. and 2. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the consent decree. A consent decree that merely references subd. 1. or 2. without documenting or referencing that specific information in the consent decree or an amended consent decree that retroactively corrects an earlier consent decree that does not comply with this subdivision is not sufficient to comply with this subdivision.

(c) 1. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency

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responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(1b) The judge or a circuit court commissioner may, as a condition under sub. (1), request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court-appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

(2) (a) A consent decree shall remain in effect up to 6 months unless the child, parent, guardian, legal custodian or expectant mother is discharged sooner by the judge or circuit court commissioner.

(c) Upon the motion of the court or the application of the child, parent, guardian, legal custodian, expectant mother, unborn child by the unborn child's guardian ad litem, intake worker or any agency supervising the child or expectant mother under the consent decree, the court may, after giving notice to the parties to the consent decree, their counsel or guardian ad litem and the court-appointed special advocate for the child, if any, extend the decree for up to an additional 6 months in the absence of objection to extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem objects to the extension, the judge shall schedule a hearing and make a determination on the issue of extension. An extension under this paragraph of a consent

decree relating to an unborn child who is alleged to be in need of protection or services may be granted after the child is born.

(3) If, prior to discharge by the court, or the expiration of the consent decree, the court finds that the child, parent, guardian, legal custodian or expectant mother has failed to fulfill the express terms and conditions of the consent decree or that the child or expectant mother objects to the continuation of the consent decree, the hearing under which the child or expectant mother was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

(5) A court which, under this section, elicits or examines information or material about a child or an expectant mother which would be inadmissible in a hearing on the allegations of the petition may not, over objections of one of the parties, participate in any subsequent proceedings if any of the following applies:

(a) The court refuses to enter into a consent decree and the allegations in the petition remain to be decided in a hearing at which one of the parties denies the allegations forming the basis for a child or unborn child in need of protection or services petition.

(b) A consent decree is granted but the petition under s. 48.13 or 48.133 is subsequently reinstated.

(6) The judge or circuit court commissioner shall inform the child and the child's parent, guardian or legal custodian, or the adult expectant mother, in writing, of the right of the child or expectant mother to object to the continuation of the consent decree under sub. (3) and the fact that the hearing under which the child or expectant mother was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

History: 1977 c. 354; 1985 a. 311; 1987 a. 27, 285, 339; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 448; 1997 a. 292; 1999 a. 149; 2001 a. 61, 109.

A finding that a consent decree has been violated must be made before the consent decree expires. Filing a motion to vacate the consent decree prior to its expiration does not extend the term of the decree and does not prevent the automatic dismissal of the original petition upon the expiration of the decree. Interest of Leif E.N. & Nora M.S. 189 Wis. 2d 480, 526 N.W.2d 275 (Ct. App. 1994).

SUBCHAPTER VI

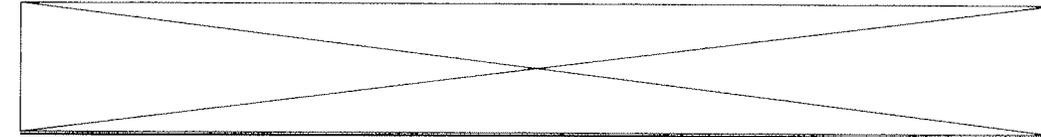
DISPOSITION

48.33 Court reports. (1) **REPORT REQUIRED.** Before the disposition of a child or unborn child adjudged to be in need of protection or services the court shall designate an agency, as defined in s. 48.38 (1) (a), to submit a report which shall contain all of the following:

(a) The social history of the child or of the expectant mother of the unborn child. (b) A recommended plan of rehabilitation

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or treatment and care for the child or expectant mother which is based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 48.295, which employs the least restrictive means available to accomplish the objectives of the plan, and, in cases of child abuse or neglect or unborn child abuse, which also includes an assessment of risks to the physical safety and physical health of the child or unborn child and a description of a plan for controlling the risks.

(c) A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family or for the expectant mother of the unborn child, the persons or agencies that would be primarily responsible for providing those services, the identity of the person or agency that would provide case management or coordination of services, if any, and, in the case of a child adjudged to be in need of protection or services, whether or not the child should receive an integrated service plan.

(d) A statement of the objectives of the plan, including any behavior changes desired of the child or expectant mother and the academic, social and vocational skills needed by the child or the expectant mother.

(e) A plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled.

(f) If the agency is recommending that the court order the child's parent, guardian or legal custodian or the expectant mother to participate in mental health treatment, anger management, individual or family counseling or parent or prenatal development training and education, a statement as to the availability of those services and as to the availability of funding for those services.

(2) HOME PLACEMENT REPORTS. A report recommending that the child remain in his or her home or that the expectant mother remain in her home may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record.

(4) OTHER OUT-OF-HOME PLACEMENTS. A report recommending placement of an adult expectant mother outside of her home shall be in writing. A report recommending placement of a child in a foster home, treatment foster home, group home, or residential care center for children and youth, in the home of a relative other than a parent, or in the home of a guardian under s. 48.977 (2) shall be in writing and shall include all of the following:

(a) A permanency plan prepared under s. 48.38.

~~(am) A description of any efforts undertaken to determine if the child is an Indian child and, if the child is an Indian child, a description of any response from the Indian custodian or Indian tribe of the child regarding the interest of the tribal court in exercising its jurisdiction over the case (as). If the child is an Indian child, documentation that placement preferences under the Indian Child Welfare Act were followed or a justification, based on good cause, why the placement preferences were not followed.~~

(b) A recommendation for an amount of child support to be paid by either or both of the child's parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support.

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

~~(cm) If the child is an Indian child, specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made active efforts to achieve the goal of the child's permanency plan.~~

(4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (4), the agency shall consider the factors that the court considers under s. 46.10 (14) (c) for deviation from the percentage standard. Prior to the dispositional hearing under s. 48.335, the agency shall provide the child's parent with all of the following:

(a) A copy of its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 46.10 (14) (c).

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(c) A written explanation of how the parent may request a revision under s. 48.363 in the amount of child support ordered by the court under s. 48.355 (2) (b) 4.

(5) IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT; CONFIDENTIALITY. If the report recommends placement in a foster home or a treatment foster home, and the name of the foster parent or treatment foster parent is not available at the time the report is filed, the agency shall provide the court and the child's parent or guardian with the name and address of the foster parent or treatment foster parent within 21 days after the dispositional order is entered, except that the court may order the information withheld from the child's parent or guardian if the court finds that disclosure would result in imminent danger to the child or to the foster parent or treatment foster parent. After notifying the child's parent or guardian, the court shall hold a hearing prior to ordering the information withheld.

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1987 a. 27, 339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481; 1995 a. 27, 77, 201; 1997 a. 27, 292; 2001 a. 59, 109; 2005 a. 25.

Cross Reference: See also s. HFS 58.04, Wis. adm. code.

48.335 Dispositional hearings. (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be in need of protection or services under s. 48.13 or an unborn child is adjudged to be in need of protection or services under s. 48.133.

(3) At hearings under this section, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

(3g)(a) At hearings under this section, if the agency, as defined in s. 48.38 (1) (a), is recommending placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(b) At hearings under this section involving an Indian child, if the agency, as defined in s. 48.38 (1) (a), is recommending

placement of the Indian child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made active efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made active efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(3r) At hearings under this section, a parent of the child may present evidence relevant to the amount of child support to be paid by either or both parents.

(4) At hearings under this section, s. 48.357, 48.363 or 48.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

(5) At the conclusion of the hearing, the court shall make a dispositional order in accordance with s. 48.355.

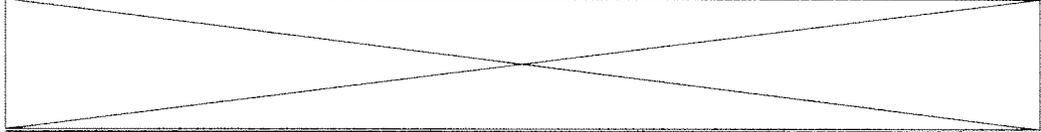
History: 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1993 a. 98, 481; 1995 a. 77; 1997 a. 252, 292; 2001 a. 109.

Judicial Council Note, 1988: Sub. (4) allows the court to admit testimony on the record by telephone or live television at hearings on disposition, revision and extension of orders, or change of placement, on request of any party, unless good cause is shown. [Re Order effective Jan. 1, 1988]

The petitioner bears the burden of proof by the greater weight of the credible evidence for purposes of dispositional and extension hearings. In Interest of T.M.S. 152 Wis. 2d 345, 448 N.W.2d 282 (Ct. App. 1989).

48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services. If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have a disability

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specified in s. 115.76 (5) in facilities which exclusively treat those categories of children and the court may not place any child expectant mother of an unborn child in need of protection or services outside of the child expectant mother's home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The dispositions under this section are as follows:

(1) Counsel the child or the parent, guardian or legal custodian.

(2) Place the child under supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the child, under conditions prescribed by the judge including reasonable rules for the child's conduct, designed for the physical, mental and moral well-being and behavior of the child and, if applicable, for the physical well-being of the child's unborn child.

(2m) Place the child in the child's home under the supervision of an agency or the department, if the department approves, and order the agency or department to provide specified services to the child and the child's family, which may include but are not limited to individual, family or, group counseling, homemaker or parent aide services, respite care, housing assistance, day care parent skills training or prenatal development training or education.

(2r) Place the child as provided in sub. (2) or (2m) and, in addition, request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court-appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

(3) Designate one of the following as the placement for the child:

1. The home of a parent or other relative of the child, except that the judge may not designate the home of a parent or other relative of the child as the child's placement if the parent or other relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

2. The home of a person who is not required to be licensed if placement is for less than 30 days, except that the judge may not designate the home of a person who is not required to be licensed as the child's placement if the person has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

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

4. A group home described in s. 48.625 (1m) if the child is at least 12 years of age, is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

5. A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(b)1. If the child is an Indian child, the judge shall place the child pursuant to the following placement preferences, as required by the federal Indian Child Welfare Act, in the order presented:

a. With a member of the Indian child's extended family.

b. In a foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe.

c. In an Indian foster home or treatment foster home licensed by an authorized non-Indian child welfare agency.

d. In a group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the needs of the Indian child.

2. If the child's Indian tribe has, by resolution, established a different order of preference, the judge shall follow that order of placement preference.

3. The judge may, for good cause shown, depart from the placement preferences under this paragraph.

4. The standards to be applied in meeting the placement preference requirements of this paragraph shall be the prevailing social and cultural standards of the Indian community in which the parent or Indian child's extended family resides or with which the parent or the child's extended family members maintain social and cultural ties.

(4) If it is shown that the rehabilitation or the treatment and care of the child cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the child.

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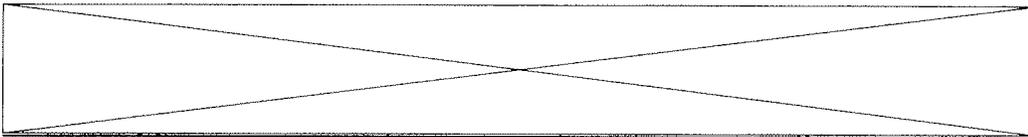
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(b) The county department in a county having a population of less than 500,000.

(bm) The department in a county having a population of 500,000 or more.

(c) A licensed child welfare agency.

(6) (a) If the child is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the child's parent to provide the special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for the special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

(6m) If the report prepared under s. 48.33 (1) recommends that the child is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, the judge may order that an integrated service plan be developed and implemented.

(10) SUPERVISED INDEPENDENT LIVING. (a) The judge may order that a child, on attaining 17 years of age, be allowed to live independently, either alone or with friends, under such supervision as the judge deems appropriate.

(b) If the plan for independent living cannot be accomplished with the consent of the parent or guardian, the judge may transfer custody of the child as provided in sub. (4) (a) to (c).

(c) The judge may order independent living as a dispositional alternative only upon a showing that the child is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(12) EDUCATION PROGRAM. (a) Except as provided in par. (d), the judge may order the child to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the child resides.

2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a technical college district located in the school district in which the child resides.

(b) The judge shall order the school board to disclose the child's pupil records, as defined under s. 118.125 (1) (d), to the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child, as necessary to determine the child's compliance with the order under par. (a).

(c) The judge shall order the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child to disclose to the school board, technical college district board or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the child, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a child with a disability, as defined under s. 115.76 (5).

(13) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the child is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child as to whether the child is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 (1) recommends that the child is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the child to participate in an alcohol or other drug abuse education program approved by the

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court. The person or agency that provides the education program shall, under the terms of a service agreement between the education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

(c) Payment for the court ordered treatment or education under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(14) (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the child expectant mother of an unborn child in need of protection or services is in need of inpatient treatment for her habitual lack of self-control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the child expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the child expectant mother's needs, the judge may order the child expectant mother to enter an inpatient alcohol or other drug abuse treatment program at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the child expectant mother or the child expectant mother's parent if the child expectant mother has not attained the age of 12, report to the agency primarily responsible for providing services to the child expectant mother as to whether the child expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(15) If it appears that an unborn child in need of protection or services may be born during the period of the dispositional order, the judge may order that the child, when born, be provided with any services or care that may be ordered for a child in need of protection or services under this section.

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

48.347 Disposition of unborn child of adult expectant mother adjudged in need of protection or services. If the judge finds that the unborn child of an adult expectant mother is in need of protection or services, the judge

shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any adult expectant mother of an unborn child not specifically found under ch. 51, 55 or 880 to be developmentally disabled or mentally ill in a facility which exclusively treats those categories of individuals and the court may not place any adult expectant mother of an unborn child in need of protection or services outside of the adult expectant mother's home unless the court finds that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. If the judge finds that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in s. 48.345 under a care and treatment plan. The dispositions under this section are as follows:

(1) **COUNSELING.** Counsel the adult expectant mother.

(2) **SUPERVISION.** Place the adult expectant mother under supervision of the county department, the department, if the department approves, or a suitable adult, including an adult relative or friend of the adult expectant mother, under conditions prescribed by the judge including reasonable rules for the adult expectant mother's conduct, designed for the physical well-being of the unborn child. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or prenatal development training or education and to make a reasonable contribution, based on ability to pay, for the cost of those services.

(3) **PLACEMENT.** Designate one of the following as the placement for the adult expectant mother:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A community-based residential facility, as defined in s. 50.01 (1g).

(4) **SPECIAL TREATMENT OR CARE.** (a) If the adult expectant mother is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the adult expectant mother to obtain the special treatment or care. If the adult expectant mother fails or is financially unable to obtain the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of

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special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for any special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for any services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

(5) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the adult expectant mother to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the adult expectant mother to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother about the adult expectant mother's attendance at the program.

(c) Payment for any treatment or education ordered under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(6) INPATIENT ALCOHOL OR DRUG TREATMENT. (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the adult expectant mother is in need of inpatient treatment for her habitual lack of self-control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the adult expectant mother's needs and that

inpatient treatment is the least restrictive treatment consistent with the adult expectant mother's needs, the judge may order the adult expectant mother to enter an inpatient alcohol or other drug abuse treatment program at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(7) SERVICES FOR CHILD WHEN BORN. If it appears that the unborn child may be born during the period of the dispositional order, the judge may order that the child, when born, be provided any services or care that may be ordered for a child in need of protection or services under s. 48.345.

History: 1997 a. 292.

48.35 Effect of judgment and disposition. (1) (a) The judge shall enter a judgment setting forth his or her findings and disposition in the proceeding.

(b) The disposition of a child or an unborn child, and any record of evidence given in a hearing in court, shall not be admissible as evidence against the child or the expectant mother of the unborn child in any case or proceeding in any other court except for the following:

1. In sentencing proceedings after the child or expectant mother has been convicted of a felony or misdemeanor and then only for the purpose of a presentence investigation.

2. In a proceeding in any court assigned to exercise jurisdiction under this chapter and ch. 938.

3. In a court of civil or criminal jurisdiction while it is exercising jurisdiction over an action affecting the family and is considering the custody of a child.

(2) Except as specifically provided in sub. (1), this section does not preclude the court from disclosing information to qualified persons if the court considers the disclosure to be in the best interests of the child or unborn child or of the administration of justice.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39; 1977 c. 29; 1977 c. 354 ss. 59, 63; 1977 c. 447, 449; 1979 c. 32, 300, 331, 359; 1985 a. 321; 1987 a. 222; 1995 a. 27, 77; 1997 a. 205, 292.

48.355 Dispositional orders. (1) **INTENT.** In any order under s. 48.345 or 48.347 the judge shall decide on a placement and treatment finding based on evidence submitted to the judge. The disposition shall employ those means necessary to maintain

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and protect the well-being of the child or unborn child which are the least restrictive of the rights of the parent and child, of the rights of the parent and child expectant mother or of the rights of the adult expectant mother, and which assure the care, treatment or rehabilitation of the child and the family, of the child expectant mother, the unborn child and the family or of the adult expectant mother and the unborn child, consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect or unborn child abuse, when it is consistent with the best interest of the child or unborn child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent or of placing an expectant mother outside of her home only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible.

(2) **CONTENT OF ORDER; COPY TO PARENT.** (a) In addition to the order, the judge shall make written findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition ordered, including findings as to the condition and need for special treatment or care of the child or expectant mother if an examination or assessment was conducted under s. 48.295. A finding may not include a finding that a child or an expectant mother is in need of psychotropic medications.

(b) The court order shall be in writing and shall contain:

1. The specific services or continuum of services to be provided to the child and family, to the child expectant mother and family or to the adult expectant mother, the identity of the agencies which are to be primarily responsible for the provision of the services ordered by the judge, the identity of the person or agency who will provide case management or coordination of services, if any, and, if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian.

1m. A notice that the child's parent, guardian or legal custodian, the child, if 14 years of age or over, the expectant mother, if 14 years of age or over, or the unborn child by the unborn child's guardian ad litem may request an agency that is providing care or services for the child or expectant mother or that has legal custody of the child to disclose to, or make available for inspection by, the parent, guardian, legal custodian, child, expectant mother or unborn child by the unborn child's guardian ad litem the contents of any record kept or information received by the agency about the child or expectant mother as provided in s. 48.78 (2) (ag) and (aj).

2. If the child is placed outside the home, the name of the place or facility, including transitional placements, where the child shall be cared for or treated, except that if the placement is

a foster home or treatment foster home and the name and address of the foster parent or treatment foster parent is not available at the time of the order, the name and address of the foster parent or treatment foster parent shall be furnished to the court and the parent within 21 days of the order. If, after a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent or treatment foster parent would result in imminent danger to the child, the foster parent or the treatment foster parent, the judge may order the name and address of the prospective foster parents or treatment foster parents withheld from the parent or guardian.

2m. If the adult expectant mother is placed outside her home, the name of the place or facility, including transitional placements, where the expectant mother shall be treated.

3. The date of the expiration of the court's order.

4. If the child is placed outside the child's home, a designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53 (5) for establishment of child support.

4m. If the child is placed outside the home and if the child's parent has not already provided a statement of income, assets, debts and living expenses to the county department or, in a county having a population of 500,000 or more, the department under s. 48.30 (6) (b) or (c) or 48.31 (7) (b) or (c), an order for the parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

5. For a child placed outside his or her home pursuant to an order under s. 48.345, a permanency plan under s. 48.38 if one has been prepared.

6. If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the child from the

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home, while assuring that the child's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies. The court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

6g. If the child is an Indian child and is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child, a finding supported by clear and convincing evidence, including testimony of one or more qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made active efforts to achieve the goal of the child's permanency plan. The court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the Indian child and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

6m. If the child is placed outside the home in a placement recommended by the agency designated under s. 48.33 (1), a statement that the court approves the placement recommended by the agency or, if the child is placed outside the home in a placement other than a placement recommended by that agency, a statement that the court has given bona fide consideration to

the recommendations made by the agency and all parties relating to the child's placement.

6r. If the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home. In a child custody proceeding involving an Indian child, the court may not find that the agency is not required to make active efforts with respect to the parent to make it possible for the child to return safely to his or her home based on the circumstances in sub. (2d) (b) 1. to 5.

7. A statement of the conditions with which the child or expectant mother is required to comply.

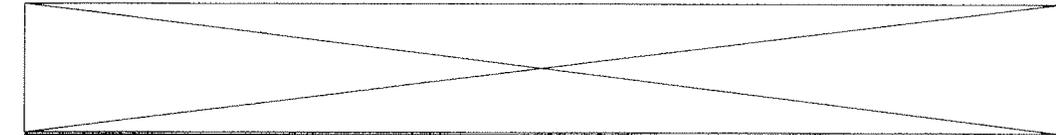
(c) If school attendance is a condition of an order under par. (b) 7., the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district, or the governing body of the private school, in which the child is enrolled to notify the county department that is responsible for supervising the child or, in a county having a population of 500,000 or more, the department within 5 days after any violation of the condition by the child.

(d) The court shall provide a copy of a dispositional order relating to a child in need of protection or services to the child's parent, guardian or trustee, to the child through the child's counsel or guardian ad litem, to the child's court-appointed special advocate, and in a child custody proceeding involving an Indian child, the child's Indian tribe. The court shall provide a copy of a dispositional order relating to an unborn child in need of protection or services to the expectant mother, to the unborn child through the unborn child's guardian ad litem and, if the expectant mother is a child, to her parent, guardian or trustee.

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to a child under a court order may, at the same time as the county department, department, or agency is making the reasonable efforts required under sub. (2) (b) 6. to prevent the removal of the child from the home or to make it possible for the child to return safely to his or her home, work with the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement.

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(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, while assuring that the child's health and safety are the paramount concerns, the court's consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's health, safety and welfare effectively in the home.

2. Financial assistance, if applicable, was provided to the family.

3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:

a. In-home support services, such as homemakers and parent aides.

b. In-home intensive treatment services.

c. Community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services.

d. Specialized services for family members with special needs.

4. Monitoring of client progress and client participation in services was provided.

5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) 1. When a court makes a finding under sub. (2) (b) 6. as to whether the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made reasonable efforts to achieve the goal of the permanency plan, the court's consideration of reasonable efforts shall include the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

2. In a child custody proceeding involving an Indian child, when a court makes a finding under sub. (2) (b) 6. as to whether the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made active efforts to achieve the goal of the permanency plan, the court's consideration of active efforts shall include the

considerations listed under par. (a) 1. to 5., whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court, whether the appropriate placement priorities under s. 48.345 (3) (b) 1. were utilized, and whether services provided were culturally responsive to the needs of the Indian child and his or her family.

(2d) REASONABLE OR ACTIVE EFFORTS NOT REQUIRED. (a) In this subsection:

1. "Aggravated circumstances" include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse and sexual abuse.

2. "Sexual abuse" means a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law of any other state or federal law if that violation would be a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in this state.

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a child to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or in a child custody proceeding involving a non-Indian child, a finding as to whether the county department, department, or agency has made reasonable efforts with respect to a parent of a child to achieve the permanency plan goal of returning the child safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the child to aggravated circumstances, as evidenced by a final judgment of conviction.

2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.

3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a)

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or (3) (a) if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.

4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.

5. That the parent has been found under s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger, as evidenced by a final order of a court of competent jurisdiction making that finding.

(bg) In a child custody proceeding involving an Indian child, the court may not find that the agency is not required to make active efforts with respect to the parent to make it possible for the child to return safely to his or her home based on the circumstances in sub. (2d) (b) 1. to 5.

(bm) The court shall make a finding specified in par. (b) 1. to 5. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which that finding is based in the dispositional order. A dispositional order that merely references par. (b) 1. to 5. without documenting or referencing that specific information in the dispositional order or an amended dispositional order that retroactively corrects an earlier dispositional order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) 1. If the court finds that any of the circumstances specified in par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, and, if the child is an Indian child, the child's tribe of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement

prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2e) PERMANENCY PLANS; FILING; AMENDED ORDERS; COPIES.

(a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 48.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

(b) Each time a child's placement is changed under s. 48.357 or a dispositional order is revised under s. 48.363 or extended under s. 48.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

(c) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child's parent or guardian, to the child or the child's counsel or guardian ad litem, to the child's court-appointed special advocate, to the person representing the interests of the public, and, if the child is an Indian child, to the child's tribe.

(2m) TRANSITIONAL PLACEMENTS.

(a) The court order may include the name of transitional placements, but may not designate a specific time when transitions are to take place. The procedures of ss. 48.357 and 48.363 shall govern when such transitions take place. However, the court may place specific time limitations on interim arrangements made for the care of the child or for the treatment of the expectant mother pending the availability of the dispositional placement.

(b) In a child custody proceeding involving an Indian child, any change in the child's placement, including a transitional placement, shall require the findings under s. 48.355 (2) (b) 6g. and compliance with the placement preferences under s. 48.345 (3) (b).

(3) PARENTAL VISITATION.

(a) Except as provided in par. (b), if, after a hearing on the issue with due notice to the parent or guardian, the court finds that it would be in the best interest of the child, the court may set reasonable rules of parental visitation.

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(Note: Thoughts on the following for an Indian child?)

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a parent of a child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

1m. Except as provided in subd. 2., if a parent who is granted visitation rights with a child under par. (a) is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the parent from having visitation with the child on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(4) **TERMINATION OF ORDERS.** Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in his or her home shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall terminate when the child reaches 18 years of age, at the end of one year after its entry, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, when the child reaches 19 years of age, whichever is later, unless the judge specifies a shorter period of time or the judge terminates the order sooner. An order under this section or s. 48.357 or 48.365 relating to an unborn child in need of protection or services that is made before the unborn child is born shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner.

(5) **EFFECT OF COURT ORDER.** Any party, person or agency who provides services for the child or the expectant mother under this section shall be bound by the court order.

(7) **ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS, EXPECTANT MOTHERS AND OTHER ADULTS.** In addition to any dispositional order entered under s. 48.345 or 48.347, the court may enter an order applicable to the parent, guardian or legal custodian of a child, to a family member of an adult expectant mother or to another adult as provided under s. 48.45.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292; 1999 a. 9, 103, 149, 186; 2001 a. 2, 16, 109.

Mandatory time limits affect a trial court's competency to act, but an objection must be raised before the trial court to avoid waiver. In Interest of L.M.C. 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education-related costs against the parents. Calumet County Department of Human Services v. Randall H. 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503, 01-1272.

48.356 Duty of court to warn. (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.

(2) In addition to the notice required under sub. (1), any written order which places a child or an expectant mother outside the home or denies visitation under sub. (1) shall notify the parent or parents or expectant mother of the information specified under sub. (1).

History: 1979 c. 330; 1983 a. 399; 1989 a. 86; 1991 a. 39; 1995 a. 275; 1997 a. 292; 2003 a. 321.

Substantial compliance is not adequate to meet the sub. (2) notice provision; oral, rather than written, notice is insufficient. In re D.F. 147 Wis. 2d 486, 433 N.W.2d 609 (Ct. App. 1988).

Dismissal of termination proceedings because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required on one order. In Interest of K.K. 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

To comply with sub. (2), the written order must contain the same information as the oral notice under sub. (1); that the notice contained more does not mean sub. (2) was violated. In Interest of Jamie L. 172 Wis. 2d 218, 493 N.W.2d 56 (1992).

When termination is under s. 48.415 (8) for murdering the other parent, no notice under sub. (1) of the conditions necessary for the return of the child is necessary as the grounds for termination, the murder, cannot be remedied. Winnebago County DSS v. Darrell A. 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. State v. Patricia A.P. 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995), 95-1164.

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The written warning under sub. (2) applies only to orders removing children from placement with their parents or denying parental visitation. Temporary physical custody orders or extensions of those orders may not lead to a loss of parental rights and do not require the written warning. *Marinette County v. Tammy C.* 219 Wis. 2d 206, 579 N.W.2d 635 (1998), 97-2946.

The last order placing the child outside the home issued before the filing of the petition to terminate parental rights, rather than each order, must contain the written notice prescribed by s. 48.356 (2). *Waukesha County v. Steven H.* 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607, 98-3033. But see also *Waushara County v. Lisa K.* 2000 WI App 145, 237 Wis. 2d 830, 615 N.W.2d 204, 00-0590, in which it was held that there was adequate notice when an extension order, which was the final order issued before a TPR petition was filed, did not contain the written notice, but the earlier orders that were extended had.

48.357 Change in placement. (1) (a) The person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel may request a change in the placement of the child or expectant mother, whether or not the change requested is authorized in the dispositional order,, as provided in par. (am) or (c), whichever is applicable.

(am) 1. If the proposed change in placement involves any change in placement other than a change in placement specified in par. (c), the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall cause written notice of the proposed change in placement to be sent to the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, and, if the child is an Indian child, the child's tribe, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem. If the expectant mother is an adult, written notice shall be sent to the adult expectant mother and the unborn child by the unborn child's guardian ad litem. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. If the child is an Indian child, the notice shall also indicate whether the new placement is in compliance with the placement preferences under s. 48.345 (3) (b) and, if the new placement is not in compliance with the placement preferences, a description of the good cause for not placing the child in a preferred placement.

2. a. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, or legal custodian and the child, if 12 years of

age or over, or the child expectant mother, if 12 years of age or over, her parent, guardian, or legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

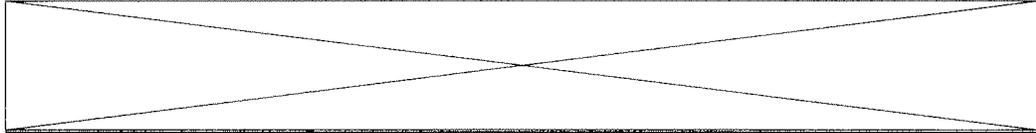
b. In a child custody proceeding involving an Indian child, any change in the child's placement shall require the findings under s. 48.355 (2) (b) 6g. and compliance with the placement preferences under s. 48.345 (3) (b).

3. If the court changes the child's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements specified in sub. (2v) (a) 2.

(c) 1. a. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

b. If the child is an Indian child and if the proposed change in placement would change the placement of an Indian child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

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The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information indicating that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

2. a. The court shall hold a hearing prior to ordering any change in placement requested under subd. 1. Not less than 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the child, the parent, guardian, and legal custodian of the child, the child's court-appointed special advocate, and all parties that are bound by the dispositional order. If all parties consent, the court may proceed immediately with the hearing.

b. If the request involves an Indian child, the notice shall be by registered mail with return receipt requested and shall include notification of the tribe's right to intervene in the proceeding. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be provided to the secretary of the United States department of the interior, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No hearing on the request shall be held until at least 10 days after the receipt of notice by the parent or Indian custodian and the tribe or the secretary of the United States department of the interior. The parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for the hearing.

3. If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v) (a) 1., one of the statements specified in sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in sub. (2v) (a) 3.

(2) If emergency conditions necessitate an immediate change in the placement of a child or expectant mother placed outside the home, the person or agency primarily responsible for implementing the dispositional order may remove the child or expectant mother to a new placement, whether or not authorized by the existing dispositional order, without the prior notice provided in sub. (1) (am) 1. The notice shall, however, be sent within 48 hours after the emergency change in placement. Any party receiving notice may demand a hearing

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under sub. (1) (am) 2. In emergency situations, a child may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days, as well as in any placement authorized under s. 48.345 (3).

(2m) (a) 1. The child, the parent, guardian, or legal custodian of the child, the expectant mother, the unborn child by the unborn child's guardian ad litem, or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may request a change in placement under this paragraph. The request shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

2. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the request shall also contain specific information showing that continued placement of the child in the home would be contrary to the welfare of the child and, except as provided in subd. 3., unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns. The request shall be submitted to the court. In addition, the court may propose a change in placement on its own motion.

3. If the child is an Indian child and if the proposed change in placement would change the placement of an Indian child placed in the home to a placement outside the home, the request shall also contain specific information indicating that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

(b) 1. The court shall hold a hearing on the matter prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement, unless the requested or proposed change in placement involves any change in placement other than a change in placement of a child placed in the home to a placement outside the home and written waivers of objection to the proposed change in placement are signed by all persons entitled to receive notice under sub. (1) (am) 1., other than a court-appointed special advocate, and the court approves. If a hearing is scheduled, the court shall notify the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical

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custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, all parties who are bound by the dispositional order, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem, and all parties who are bound by the dispositional order, at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be attached to the notice. If all of the parties consent, the court may proceed immediately with the hearing.

2. b. ~~If the request involves an Indian child, the notice shall be by registered mail with return receipt requested and shall include notification of the tribe's right to intervene in the proceeding. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be provided to the secretary of the United States department of the interior, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No hearing on the request shall be held until at least 10 days after the receipt of notice by the parent or Indian custodian and the tribe or the secretary of the United States department of the interior. The parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for the hearing.~~

(c) If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v) (a) 1., one of the statements specified in sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in sub. (2v) (a) 3.

(2r) If a hearing is held under sub. (1) (am) 2. or (2m) (b) and the change in placement would remove a child from a foster home, treatment foster home, or other placement with a physical custodian described in s. 48.62 (2), the court shall give the foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the child and the requested change in placement. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (am) 1. or (2m) (b) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

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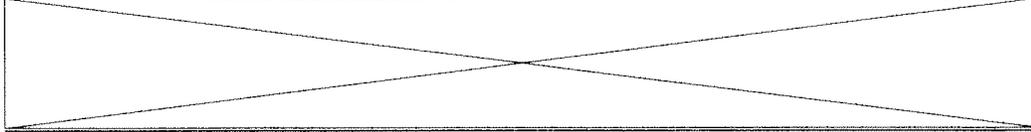
(2v) (a) A change in placement order under sub. (1) or (2m) shall contain all of the following:

1. If the change in placement order changes the child's placement from a placement in the child's home to a placement outside the child's home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns. ~~If the child is an Indian child, the order shall also include a specific finding supported by clear and convincing evidence, including testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child~~

2. If the change in placement order would change the placement of the child to a placement outside the home recommended by the person or agency primarily responsible for implementing the dispositional order, whether from a placement in the home or from another placement outside the home, a statement that the court approves the placement recommended by that person or agency or, if the change in placement order would change the placement of the child to a placement outside the home that is not a placement recommended by that person or agency, whether from a placement in the home or from another placement outside the home, a statement that the court has given bona fide consideration to the recommendations made by that person or agency and all parties relating to the child's placement.

3. If the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home. ~~This paragraph does not apply in a child custody proceeding involving an Indian child.~~

(b) The court shall make the findings specified in par. (a) 1. and 3. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the change in placement order. A change in placement order that merely references par. (a) 1. or 3. without documenting or referencing that specific information in the change in placement order or an amended change in placement order that retroactively corrects an earlier change in placement order that does not comply with this paragraph is not sufficient to comply with this paragraph.



(c) 1. If the court finds under par. (a) 3. that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(4d) (a) Except as provided in par. (b), the court may not change a child's placement to a placement in the home of a person who has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, if the conviction has not been reversed, set aside or vacated.

(am) Except as provided in par. (b), if a parent in whose home a child is placed is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated, the court shall change the child's placement to a placement out of the home of the parent on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the placement would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

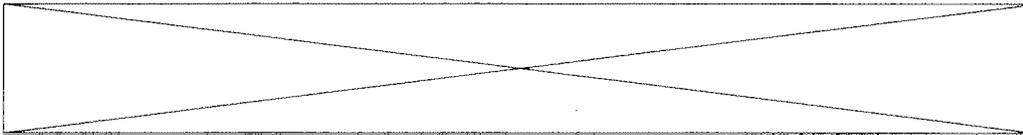
(5m) (a) If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

(b) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(5r) The court may not change the placement of an expectant mother of an unborn child in need of protection or services from a placement in the expectant mother's home to a placement outside of the expectant mother's home unless the court finds that the expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(6) No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the child's home to a placement outside the home the court may extend the expiration date of the original order to the date on which the child reaches 18 years of age, to

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the date that is one year after the date of the change in placement order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, to the date on which the child reaches 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall shorten the expiration date of the original order to the date that is one year after the date of the change in placement order or to an earlier date as specified by the court.

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292; 1999 a. 9, 103, 149; 2001 a. 16, 103, 109.

A foster parent is entitled to a hearing under s. 48.64 (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. *Bingenheimer v. DHSS*, 129 Wis. 2d 100, 383 N.W.2d 898 (1986).

48.36 Payment for services. (1) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.345 or by a change in placement under s. 48.357, the duty of the parent or guardian or, in the case of a transfer of guardianship and custody under s. 48.839 (4), the duty of the former guardian to provide support shall continue even though the legal custodian or the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the child shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department or a county department under s. 46.22, 46.23, 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department of workforce development or the county child support agency under s. 59.53 (5). If the court has insufficient information with which to determine the amount of support, the court shall order the child's parent to furnish a statement of income, assets, debts and living expenses, if the parent has not already done so, to the court within 10 days after the court's order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(2) If an expectant mother or a child whose legal custody has not been taken from a parent or guardian is given

educational and social services, or medical, psychological or psychiatric treatment by order of the court, the cost of those services or that treatment, if ordered by the court, shall be a charge upon the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child or from an adult expectant mother as the court may order based on the ability of the parent, guardian or adult expectant mother to pay. This subsection shall be subject to s. 46.03 (18).

(3) In determining county or departmental liability, this section does not apply to services specified in ch. 115.

History: 1977 c. 354; 1979 c. 221; 1981 c. 81; 1985 a. 29 s. 3202 (23); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446, 481; 1995 a. 27 ss. 2468, 9126 (19); 1995 a. 77, 404; 1997 a. 3, 27, 292.

48.361 Payment for alcohol and other drug abuse services. (1) In this section, "alcohol and other drug abuse services" means all of the following:

(a) Any alcohol or other drug abuse examination or assessment ordered by a court under s. 48.295 (1).

(b) Any special treatment or care that relates to alcohol or other drug abuse services ordered by a court under s. 48.345 (6) (a) or 48.347 (4) (a).

(c) Any alcohol or other drug abuse treatment or education ordered by a court under s. 48.345 (6) (a), (13) or (14) or 48.347 (4) (a), (5) or (6) (a).

(2) (a) 1. If a child's parent neglects, refuses or is unable to provide court-ordered alcohol and other drug abuse services for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered alcohol and drug abuse services. If the parent consents to provide court-ordered alcohol and other drug abuse services for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered alcohol and other drug abuse services the court may order the health insurance provider or 3rd-party payer to pay for the court-ordered alcohol and other drug abuse services in accordance with the terms of the parent's health insurance policy or other 3rd-party payment plan.

1m. If an adult expectant mother neglects, refuses or is unable to obtain court-ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd-party payments, the judge may order the adult expectant mother to pay for the court-ordered alcohol and drug abuse services. If the adult expectant mother consents to obtain court-ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd-party payments but the health

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insurance provider or other 3rd-party payer refuses to provide the court-ordered alcohol and other drug abuse services, the court may order the health insurance provider or 3rd-party payer to pay for the court-ordered alcohol and other drug abuse services in accordance with the terms of the adult expectant mother's health insurance policy or other 3rd-party payment plan.

2. This paragraph applies to payment for alcohol and other drug abuse services in any county, regardless of whether the county is a pilot county under s. 48.547.

(am) 1. If a court in a county that has an alcohol or other drug abuse program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with par. (b).

2. If a court in a county that does not have an alcohol and other drug abuse program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with s. 48.345 (6) (a), 48.347 (4) (a) or 48.36.

(b) 1. In counties that have an alcohol and other drug abuse program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the child's county of legal residence to pay for the court-ordered alcohol and other drug abuse services whether or not custody has been taken from the parent.

1m. In counties that have an alcohol and other drug abuse program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the adult expectant mother's county of legal residence to pay for the court-ordered alcohol and other drug abuse services provided for the adult expectant mother.

2. If a judge orders a county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services under this paragraph, the provision of the alcohol and other drug abuse services shall be subject to conditions specified in ch. 51.

(c) Payment for alcohol and other drug abuse services by a county department under this section does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of alcohol and other drug abuse services. Payment by the county under this section does not prevent recovery of reasonable contribution toward the costs of the court-ordered alcohol and other drug abuse services from the parent or adult expectant mother which is based upon the ability of the parent or adult

expectant mother to pay. This subsection is subject to s. 46.03 (18).

History: 1987 a. 339; 1989 a. 56 s. 259; 1993 a. 446; 1995 a. 77, 275; 1997 a. 292.

48.362 Payment for certain special treatment or care services. (1) In this section, "special treatment or care" has the meaning given in s. 48.02 (17m), except that it does not include alcohol and other drug abuse services.

(2) This section applies to the payment of court-ordered special treatment or care under s. 48.345 (6) (a), whether or not custody has been taken from the parent, and to the payment of court-ordered special treatment or care under s. 48.347 (4) (a).

(3) If a child's parent neglects, refuses or is unable to provide court-ordered special treatment or care for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered special treatment or care. If the parent consents to provide court-ordered special treatment or care for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the parent's health insurance policy or other 3rd-party payment plan.

(3m) If an adult expectant mother neglects, refuses or is unable to obtain court-ordered special treatment or care for herself through her health insurance or other 3rd-party payments, the judge may order the adult expectant mother to pay for the court-ordered special treatment or care. If the adult expectant mother consents to obtain court-ordered special treatment or care for herself through her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the adult expectant mother's health insurance policy or other 3rd-party payment plan.

(4) (a) If the judge finds that payment is not attainable under sub. (3) or (3m), the judge may order the county department under s. 51.42 or 51.437 of the county of legal residence of the child or expectant mother to pay the cost of any court-ordered special treatment or care that is provided by or under contract with that county department.

(b) Payment for special treatment or care by a county department under par. (a) does not prohibit the county department from contracting with another county department or

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approved treatment facility for the provision of special treatment or care.

(c) A county department that pays for court-ordered special treatment or care under par. (a) may recover from the parent or adult expectant mother, based on the ability of the parent or adult expectant mother to pay, a reasonable contribution toward the costs of the court-ordered special treatment or care. This paragraph is subject to s. 46.03 (18).

History: 1993 a. 446; 1995 a. 77, 275; 1997 a. 292.

48.363 Revision of dispositional orders. (1) (a) A child, the child's parent, guardian or legal custodian, an expectant mother, an unborn child by the unborn child's guardian ad litem, any person or agency bound by a dispositional order or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent, or the court may on its own motion propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or court proposal indicates that new information is available which affects the advisability of the court's dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

(b) If a hearing is held, the court shall notify the child, the child's parent, guardian and legal custodian, all parties bound by the dispositional order, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem; or shall notify the adult expectant mother, the unborn child through the unborn child's guardian ad litem, all parties bound by the dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered, at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

(c) If the proposed revision is for a change in the amount of child support to be paid by a parent, the court shall order the child's parent to provide a statement of income, assets, debts

and living expenses to the court and the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

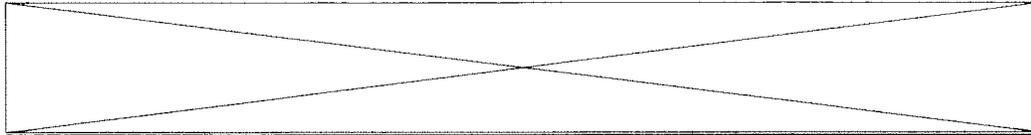
(d) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(1m) If a hearing is held under sub. (1) (a), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2) If the court revises a dispositional order with respect to the amount of child support to be paid by a parent for the care and maintenance of the parent's minor child who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

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History: 1977 c. 354; 1979 c. 300; 1985 a. 172; 1993 a. 481; 1995 a. 275, 404; 1997 a. 3, 80, 237, 292; 1999 a. 103, 149, 2001 a. 38, 109.

Sub. (1) does not set the procedure to adjudicate the issue of residence for an incompetent minor whose parent's residence has changed. *Waukesha County v. Dodge County*, 229 Wis. 2d 766, 601 N.W.2d 296 (Ct. App. 1999), 98-3022.

48.365 Extension of orders. (1) In this section, a child is considered to have been placed outside of his or her home on the date on which the child was first removed from his or her home.

(1m) The parent, child, guardian, legal custodian, expectant mother, unborn child by the unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered or the court on its own motion, may request an extension of an order under s. 48.355 including an order under s. 48.355 that was entered before the child was born. The request shall be submitted to the court which entered the order. No order under s. 48.355 may be extended except as provided in this section.

(2) No order may be extended without a hearing. The court shall notify the child, the child's parent, guardian and legal custodian, all the parties present at the original hearing, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child through the unborn child's guardian ad litem, all the parties present at the original hearing and the district attorney or corporation counsel in the county in which the dispositional order was entered, of the time and place of the hearing. If the child is an Indian child, notification shall also be provided to the Indian child's Indian custodian and tribe.

(2g) (a) At the hearing the person or agency primarily responsible for providing services to the child or expectant mother shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the rehabilitation or care and treatment of the child or for the rehabilitation and treatment of the expectant mother and the care of the unborn child.

(b) If the child is placed outside of his or her home, the report shall include all of the following:

1. A copy of the report of the review panel under s. 48.38 (5), if any, and a response to the report from the agency primarily responsible for providing services to the child.

2. An evaluation of the child's adjustment to the placement and of any progress the child has made, suggestions for amendment of the permanency plan, and specific information

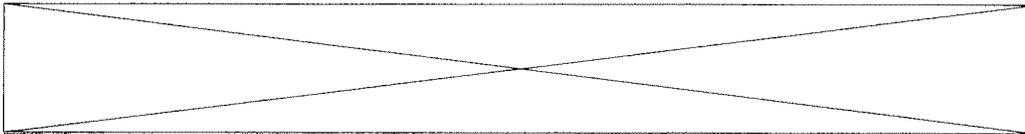
showing the efforts that have been made to achieve the goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the child's placement, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

3. If the child has been placed outside of his or her home for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the child. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the child, and whether or not the child should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the child be registered with the adoption information exchange or report the reason why registering the child is contrary to the best interest of the child.

(c) In cases where the child has not been placed outside the home, the report shall contain a description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation, an explanation of why these efforts have not yet succeeded in meeting the objective, and anticipated future planning for the child.

(2m) (a) 1. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the person or agency primarily responsible for providing services to the child shall present as evidence specific information showing that the agency has made reasonable or, in the case of an Indian child, active efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and, except in the case of an Indian child, any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies. The judge shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable or, in the case of an Indian child, active efforts were made by the agency primarily responsible for providing services to the

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child to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and, except in the case of an Indian child, the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies. An order shall be issued under s. 48.355.

2. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the child is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home. This paragraph does not apply to the requirement, in the case of an Indian child, for the person or agency primarily responsible for providing services to the child to make active efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge shall make the findings specified in subd. 1. relating to reasonable or, in the case of an Indian child, active efforts to achieve the goal of the child's permanency plan and the findings specified in subd. 2. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the order issued under s. 48.355. An order that merely references subd. 1. or 2. without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this subdivision is not sufficient to comply with this subdivision.

(ad) 1. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing. This paragraph does not apply to the requirement, in the case of an Indian child, for the person or agency primarily responsible for providing services to the child to make active efforts with respect to the parent to make it possible for the child to return safely to his or her home.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

(ag) The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (ad) 2. or sub. (2) an opportunity to be heard at the hearing by permitting the foster

parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under par. (ad) 2. or sub. (2) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(b) If a child has been placed outside the home under s. 48.345, or if an adult expectant mother has been placed outside the home under s. 48.347, and an extension is ordered under this subsection, the judge shall state in the record the reason for the extension.

(3) The appearance of any child may be waived by consent of the child, counsel or guardian ad litem.

(4) The judge shall determine which dispositions are to be considered for extensions.

(5) Except as provided in s. 48.368, an order under this section that continues the placement of a child in his or her home or that relates to an unborn child of an adult expectant mother shall be for a specified length of time not to exceed one year after its date of entry. Except as provided in s. 48.368, an order under this section that continues the placement of a child in an out-of-home placement shall be for a specified length of time not to exceed the date on which the child reaches 18 years of age, one year after the date of entry of the order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, the date on which the child reaches 19 years of age, whichever is later.

(6) If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances specified in s. 48.315 (1).

(7) Nothing in this section may be construed to allow any changes in placement. Changes in placement may take place only under s. 48.357.

History: 1977 c. 354; 1979 c. 300; 1983 a. 351, 399, 538; 1985 a. 172; 1987 a. 383; 1989 a. 31, 86, 107, 359; 1993 a. 16, 98, 377, 446; 1995 a. 27, 77, 275; 1997 a. 27, 80, 237, 292; 1999 a. 32, 149; 2001 a. 109.

A dispositional order may be extended without a finding of dangerousness. In Interest of R.E.H. 101 Wis. 2d 647, 305 N.W.2d 162 (Ct. App. 1981).

An extension under sub. (6) does not deprive a juvenile of liberty without due process. In Interest of S.D.R. 109 Wis. 2d 567, 326 N.W.2d 762 (1982).

Mandatory time limits affect a trial court's competency to act, but an objection must be raised before the trial court to avoid waiver. In Interest of L.M.C. 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

The court may extend a dispositional order for 30 days under sub. (6) to consider a petition to extend the original order even when the juvenile turns 18

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during the extension period. In Interest of W.P. 153 Wis. 2d 50, 449 N.W.2d 615 (1990).

The court loses competence to exercise jurisdiction to extend an order when a hearing is not held within the 30-day period under sub. (6); the 30-day period may not be expanded by continuance under s. 48.315 and the court's loss of competence cannot be waived. In Interest of B.J.N. 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

48.366 Extended court jurisdiction. (1) APPLICABILITY.

(a) Subject to par. (c), if the person committed any crime specified under s. 940.01, 940.02, 940.05, 940.21, 940.225 (1) (a) to (c), 948.03 or 948.04, is adjudged delinquent on that basis and is placed in a secured correctional facility under s. 48.34 (4m), 1993 stats., the court shall enter an order extending its jurisdiction as follows:

1. If the act for which the person was adjudged delinquent was a violation of s. 940.01, the order shall remain in effect until the person reaches 25 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

2. If the act for which the person was adjudged delinquent was any other violation specified in this paragraph, the order shall remain in effect until the person reaches 21 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

(b) Subject to par. (c), if the person committed a crime specified in s. 940.20 (1) or 946.43 while placed in a secured correctional facility and is adjudged delinquent on that basis following transfer of jurisdiction under s. 970.032, the court shall enter an order extending its jurisdiction until the person reaches 21 years of age or until termination of the order under sub. (6), whichever occurs earlier.

(c) A court may not enter an order extending its jurisdiction as provided in par. (a) or (b) with respect to any violation committed after June 30, 1996.

(5) REVISION OF ORDER. (a) Any of the following may petition the court for a revision of an order:

1. The person subject to the order.

2. The department of corrections or county department ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(b) The department of corrections or county department may, at any time, file a petition proposing either release of a person subject to an order to aftercare supervision or revocation of the person's aftercare supervision. The petition shall set forth in detail:

1. The proposed treatment and supervision plan and proposed institutional placement, if any.

2. Any available information that is relevant to the advisability of revising the order.

(c) The person subject to an order may, no more often than once each year, file a petition proposing his or her release to aftercare supervision. The petition shall set forth in detail:

1. The proposed conditions of aftercare supervision.

2. Any available information that is relevant to the advisability of revising the order.

(d) 1. At the time the department of corrections or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the petition. The notice to the person who is the subject of the petition shall state that the person has a right to request a hearing on the petition and, if the petition is for revocation of a person's aftercare supervision, that the person has the right to counsel. The department of corrections or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the child was adjudged delinquent and the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), the person shall provide written notice of the petition to the department of corrections or county department, as applicable.

(e) In making a determination under this subsection, the court shall balance the needs of the person with the protection of the public.

(f) If the court grants a petition to release a person to aftercare supervision and the person's county of residence is one in which the county department provides aftercare supervision, the department of corrections may contract with the county department under s. 301.08 (2) for aftercare supervision of the person.

(g) Sections 48.357 and 48.363 do not apply to orders under this subsection.

(6) PETITION FOR DISCHARGE; HEARINGS. (a) Any of the following may petition the court that entered an order to terminate the order and to discharge the person subject to the order from supervision:

1. The person subject to the order.

2. The department of corrections or county department ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(b) The petition shall state the factual basis for the petitioner's belief that discharge will not pose a threat of bodily harm to other persons. The department of corrections or county department may file a petition at any time. The person subject to the order may file a petition not more often than once a year.

(c) 1. At the time the department of corrections or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the

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petition. The notice to the person who is the subject of the petition shall state that the person has the right to counsel. The department of corrections or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the person was adjudged delinquent and to the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), he or she shall provide written notice of the petition to the department of corrections or county department, whichever has been ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(d) If the court denies the petition, the person shall remain under the jurisdiction of the court until the expiration of the order or until a subsequent petition for discharge under this subsection is granted, whichever is sooner.

(7) NOTICE OF HEARING. Upon receipt of a request for a hearing under sub. (5) or upon receipt of a petition under sub. (6), the court shall set a date for a hearing on the matter. In any of those cases, the court shall notify the department of corrections and each person specified in sub. (5) (d) 1. or (6) (c) 1. of the hearing at least 7 days before the hearing, except that if any such person lives outside of this state, the notice shall be mailed at least 14 days before the hearing.

(8) TRANSFER TO OR BETWEEN FACILITIES. The department of corrections may transfer a person subject to an order between secured correctional facilities. After the person attains the age of 17 years, the department of corrections may place the person in a state prison named in s. 302.01, except that the department of corrections may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). If the person is 15 years of age or over, the department of corrections may transfer the person to the Racine youthful offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d). If the department of corrections places a person subject to an order under this section in a state prison, that department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n).

History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16.

48.368 Continuation of dispositional orders. (1) If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying

termination of parental rights is filed during the year in which a dispositional order under s. 48.355 or an extension order under s. 48.365 is in effect, the dispositional or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

(2) If a child's placement with a guardian appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent foster placement for the child while a dispositional order under s. 48.345, a revision order under s. 48.363 or an extension order under s. 48.365 is in effect with respect to the child, such dispositional order, revision order or extension order shall remain in effect until the earliest of the following:

(a) Thirty days after the guardianship terminates under s. 48.977 (7).

(b) A court enters a change in placement order under s. 48.357.

(c) A court order terminates such dispositional order, revision order or extension order.

(d) The child attains the age of 18 years.

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

48.37 Costs and fees. (1) A court assigned to exercise jurisdiction under this chapter and ch. 938 may not impose costs, fees, or surcharges under ch. 814 against a child under 14 years of age but may impose costs, fees, and surcharges under ch. 814 against a child 14 years of age or older.

(2) Notwithstanding sub. (1), no costs, fees, or surcharges may be imposed under ch. 814 against any child in a circuit court exercising jurisdiction under s. 48.16.

History: 1977 c. 354, 449; 1979 c. 300, 359; 1987 a. 27; 1991 a. 263; 1993 a. 387; 1995 a. 77; 2003 a. 139.

48.371 Access to certain information by substitute care provider. (1) If a child is placed in a foster home, treatment foster home, group home, or residential care center for children and youth, including a placement under s. 48.205 or 48.21, the agency, as defined in s. 48.38 (1) (a), that placed the child or arranged for the placement of the child shall provide the following information to the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) Results of a test or a series of tests of the child to determine the presence of HIV, as defined in s. 968.38 (1) (b), antigen or nonantigenic products of HIV, or an antibody to HIV, as provided under s. 252.15 (5) (a) 19., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster

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parent, treatment foster parent, or operator of the group home or residential care center for children and youth of the confidentiality requirements under s. 252.15 (6).

(b) Results of any tests of the child to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(c) Any other medical information concerning the child that is necessary for the care of the child. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(3) At the time of placement of a child in a foster home, treatment foster home, group home, or residential care center for children and youth or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 48.38 (1) (a), responsible for preparing the child's permanency plan shall provide to the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth information contained in the court report submitted under s. 48.33 (1), 48.365 (2g), 48.425 (1), 48.831 (2) or 48.837 (4) (c) or permanency plan submitted under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c) or 48.831 (4) (e) relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to any of the following:

(a) Any mental, emotional, cognitive, developmental, or behavioral disability of the child. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this subsection shall keep the information confidential.

(b) Any involvement of the child in any criminal gang, as defined in s. 939.22 (9), or in any other group in which any child was traumatized as a result of his or her association with that group. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(c) Any involvement of the child in any activities that are harmful to the child's physical, mental, or moral well-being. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(d) Any involvement of the child, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02, or 948.025, prostitution in violation of s. 944.30, sexual exploitation of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity in violation of s. 948.055, if the information is necessary for the care of the child or for the protection of any person living in the foster home, treatment foster home, group home, or residential care center for children and youth. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(e) The religious affiliation or belief of the child.

History: 1993 a. 395; 1995 a. 275; 1997 a. 272; 2001 a. 59, 69, 105.

NOTE: 1993 Wis. Act 395, which created this section, contains extensive explanatory notes.

48.373 Medical authorization. (1) The court assigned to exercise jurisdiction under this chapter and ch. 938 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 938 determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 and consents.

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

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

History: 1971 c. 105; 1977 c. 354 s. 64; 1977 c. 449; Stats. 1977 s. 48.373; 1991 a. 263; 1993 a. 32; 1995 a. 77.

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

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

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

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

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

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

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

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

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

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

(2) DEFINITIONS. In this section:

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

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

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

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

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

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

(em) "Member of the clergy" has the meaning given in s. 765.002 (1).

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

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

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

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

1. The person or the person's agent has, either directly or through a referring physician or his or her agent, received and made part of the minor's medical record, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed written consent of one of her parents; or of the minor's guardian or legal custodian, if one has been appointed; or of an adult family member of the minor; or of one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor.
2. The court has granted a petition under sub. (7).

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

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

1g. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record and report the sexual intercourse as required under s. 48.981 (2) or (2m) (e). Any minor who makes a false statement under this subdivision, which the minor does not believe is true, is subject to a proceeding under s. 938.12 or 938.13 (12), whichever is applicable, based on a violation of s. 946.32 (2).

1m. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her

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professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, for consent.

2. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that the pregnancy is the result of sexual intercourse with a caregiver specified in s. 48.981 (1) (am) 1., 2., 3., 4. or 8. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record. The person who intends to perform or induce the abortion shall report the sexual intercourse as required under s. 48.981 (2m) (d) 1.

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

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

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

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

petition on behalf of the minor, if any, is present and shall do all of the following:

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

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

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

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

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

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

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

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

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

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

- 1. That the minor is mature and well-informed enough to make the abortion decision on her own.
- 2. That the performance or inducement of the abortion is in the minor's best interests.

(d) *Time limit.* 1. The court shall make the determination under par. (c) and issue an order within 3 calendar days after the initial appearance unless the minor and her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of the time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a certified copy of the court's order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a copy of the court's order denying the petition and shall also notify the minor by her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, that she has a right to initiate an appeal under s. 809.105.

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

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

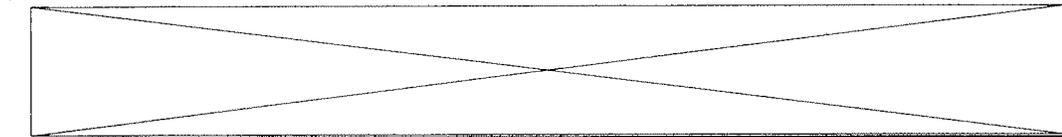
(e) *Confidentiality.* The identity of a minor who files or for whom is filed a petition under s. 48.257 and all records and other papers relating to a proceeding under this subsection shall be kept confidential except for use in a forfeiture action under s. 895.037 (2), a civil action filed under s.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

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

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

History: 1991 a. 263, 315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309; 2001 a. 16, 103.

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The essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. *Planned Parenthood v. Casey*, 505 U.S. 833, 120 L. Ed. 2d 674 (1992).

SUBCHAPTER VII

PERMANENCY PLANNING; RECORDS

48.38 Permanency planning. (1) DEFINITIONS. In this section:

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

(am) "Independent agency" means a private, nonprofit organization, but does not include a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(b) "Permanency plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(2) **PERMANENCY PLAN REQUIRED.** Except as provided in sub. (3), for each child living in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if any of the following conditions exists, and, for each child living in the home of a relative other than a parent or, in the case of an Indian child living in the home of a member of that Indian child's extended family as defined in s. 48.02 (8m), that agency shall prepare a written permanency plan, if any of the conditions specified in pars. (a) to (e) exists:

(a) The child is being held in physical custody under s. 48.207, 48.208 or 48.209.

(b) The child is in the legal custody of the agency.

(c) The child is under the supervision of an agency under s. 48.64 (2), under a consent decree under s. 48.32 (1) (b), or under a court order under s. 48.355.

(d) The child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63 (1) or (5) (b).

(e) The child is under the guardianship of the agency.

(f) The child's care would be paid for under s. 49.19 but for s. 49.19 (20).

(g) The child's parent is placed in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility and the child is residing with that parent.

(3) **TIME.** Subject to s. 48.355 (2d) (c) 1., the agency shall file the permanency plan with the court within 60 days after the date on which the child was first removed from his or her home, except that if the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail, or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.

(4) **CONTENTS OF PLAN.** The permanency plan shall include all of the following:

(ag) The name, address, and telephone number of the child's parent, guardian, and legal custodian.

(am) The date on which the child was removed from his or her home and the date on which the child was placed in out-of-home care.

(ar) A description of the services offered and any services provided in an effort to prevent the removal of the child from his or her home, while assuring that the health and safety of the child are the paramount concerns, and to achieve the goal of the permanency plan, except that the permanency plan, except the permanency plan for an Indian child, is not required to include a description of the services offered or provided with respect to a parent of the child to prevent the removal of the child from the home or to achieve the permanency plan goal of returning the child safely to his or her home if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent.

(b) The basis for the decision to hold the child in custody or to place the child outside of his or her home.

(bm) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate.

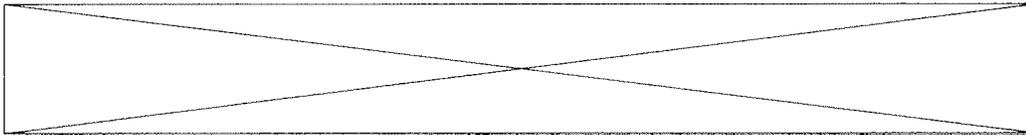
(c) The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

(cm) If the child is an Indian child, a statement as to whether or not the placement is a preferred placement under s. 48.345 (3) (b) and, if not, why a preferred placement was not utilized.

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate or documentation that placement more than 60 miles from the child's home is in the child's best interests. The placement of a child in a licensed foster home or a licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1).

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2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.

3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833 or 48.837.

(dg) Information about the child's education, including all of the following:

1. The name and address of the school in which the child is or was most recently enrolled.

2. Any special education programs in which the child is or was previously enrolled.

3. The grade level in which the child is or was most recently enrolled and all information that is available concerning the child's grade level performance.

4. A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared under s. 48.33 (1) (e).

(dm) If as a result of the placement the child has been or will be transferred from the school in which the child is or was most recently enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child's transfer to another school would be in the child's best interests.

(dr) Medical information relating to the child, including all of the following:

1. The names and addresses of the child's physician, dentist, and any other health care provider that is or was previously providing health care services to the child.

2. The child's immunization record, including the name and date of each immunization administered to the child.

3. Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.

4. The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not safe or appropriate.

(f) A description of the services that will be provided to the child, the child's family, and the child's foster parent, the child's treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living

to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote safety and stability in the placement.

2. Meet the child's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(fg) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 48.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the child to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a child's permanency plan:

1. Return of the child to the child's home.

2. Placement of the child for adoption.

3. Placement of the child with a guardian.

4. Permanent placement of the child with a fit and willing relative.

5. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

(fm) If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal.

(g) The conditions, if any, upon which the child will be returned safely to his or her home, including any changes required in the parents' conduct, the child's conduct or the nature of the home.

(h) If the child is 15 years of age or over, a description of the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living. The description shall include all of the following:

1. The anticipated age at which the child will be discharged from out-of-home care.

2. The anticipated amount of time available in which to prepare the child for the transition from out-of-home care to independent living.

3. The anticipated location and living situation of the child on discharge from out-of-home care.

4. A description of the assessment processes, tools, and methods that have been or will be used to determine the

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programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living.

5. The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out-of-home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

(5) **PLAN REVIEW.** (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the child was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the child was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review the court shall hold a hearing under sub. (5m) to review the permanency plan, which hearing may be instead of or in addition to the review under this subsection.

(ag) If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court in a county having a population of less than 500,000 appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency. If the court in a county having a population of 500,000 or more appoints an independent agency under this paragraph, the department shall authorize and contract for the purchase of services from the independent agency.

(b) The court or the agency shall notify the parents of the child, the child, if he or she is 12 years of age or older, the child's Indian custodian and tribe if the child is an Indian child, and the child's foster parent, the child's treatment foster parent, the operator of the facility in which the child is living, or the relative or Indian child's extended family member with whom the child is living of the date, time, and place of the review, of the issues to be determined as part of the review, and of the fact

that they may have an opportunity to be heard at the review by submitting written comments not less than 10 working days before the review or by participating at the review. The court or agency shall notify the person representing the interests of the public, the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate of the date of the review, of the issues to be determined as part of the review, and of the fact that they may submit written comments not less than 10 working days before the review. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child's case record.

(c) The court or the panel shall determine each of the following:

1. The continuing necessity for and the safety and appropriateness of the placement.

2. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child and the child's guardian, if any.

3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents.

4. The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child.

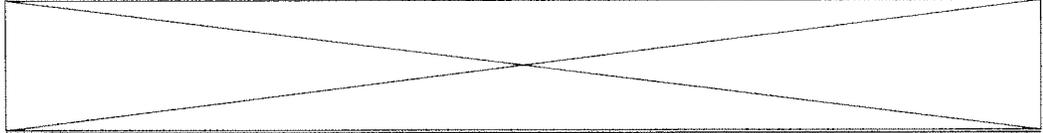
5. The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement.

6. If the child has been placed outside of his or her home, as described in s. 48.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:

- a. Being returned safely to his or her home.
- b. Having a petition for the involuntary termination of parental rights filed on behalf of the child.
- c. Being placed for adoption.
- cg. Being placed with a guardian.
- cm. Being placed in the home of a fit and willing relative of the child.
- d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

7. Whether reasonable or, if the child is an Indian child, active efforts were made by the agency to achieve the goal of

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the permanency plan, unless return of the child to the home is the goal of the permanency plan and, except for an Indian child, any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad litem, the child's court-appointed special advocate, and, if the child is an Indian child, the child's Indian custodian and tribe a copy of the permanency plan and any written comments submitted under par. (b). Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad litem, the child's court-appointed special advocate, and, if the child is an Indian child, the child's Indian custodian and tribe may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order, the child or the child's counsel or guardian ad litem, the person representing the interests of the public, the child's parent or guardian, the child's court-appointed special advocate, the child's Indian custodian and tribe if the child is an Indian child, and the child's foster parent, the child's treatment foster parent or the operator of the facility where the child is living.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(5m) PERMANENCY PLAN HEARING. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative or Indian child's extended family member with whom the child is living; the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate; the agency that prepared the permanency plan; for an Indian child, the child's Indian custodian and tribe; and the

person representing the interests of the public of the date, time, and place of the hearing.

2. In the case of an Indian child's parent, Indian custodian, and tribe, notice shall be by registered mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice shall be to the secretary of United States department of the interior, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and tribe. The permanency plan hearing shall not be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the secretary of the United States department of the interior. The parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for the hearing.

(c) Any person who is provided notice of the hearing may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, treatment foster parent, operator of a facility in which a child is living, relative or Indian child's extended family member with whom a child is living, or an Indian child's Indian custodian or tribe who receives notice of a hearing under par. (b) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the child's counsel or guardian ad litem, to the child's court-appointed special advocate, and to an Indian child's parent or Indian custodian and tribe. Notwithstanding s. 48.78 (2) (a), the person representing the interests of the public, the child's counsel or guardian ad litem, the child's court-appointed special advocate, and the child's Indian custodian or tribe may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative or Indian child's extended family member with whom the child is living; the child's court-appointed special advocate; the agency that prepared the

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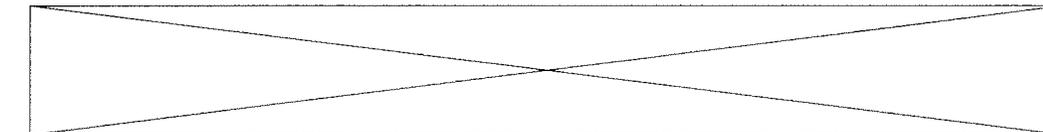
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permanency plan, the Indian child's Indian custodian and tribe; and the person representing the interests of the public. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 48.363 or order a change in placement under s. 48.357, as appropriate.

(6) RULES. The department shall promulgate rules establishing the following:

- (a) Procedures for conducting permanency plan reviews.
- (b) Requirements for training review panels.
- (c) Standards for reasonable efforts to prevent placement of children outside of their homes, while assuring that their health and safety are the paramount concerns, and or reasonable or, in the case of an Indian child, active efforts to make it possible for children to return safely to their homes if they have been placed outside of their homes.
- (d) The format for permanency plans and review panel reports.
- (e) Standards and guidelines for decisions regarding the placement of children.

History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491; 1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275; 1997 a. 27, 35, 104, 237; 1999 a. 149; 2001 a. 2, 59, 69, 109.

NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 Wis. 2d 222, 499 N.W.2d 219 (Cl. App. 1993).

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) or (5) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the

purpose of reporting news without revealing the identity of the child or adult expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

(1b) If requested by the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report, or if requested by the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or child a copy of that report. If requested by the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, if requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, or if requested by an unborn child through the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem a copy of that report.

(1d) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report or upon the written permission of the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or child in the written permission. Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, or of an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child

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by the unborn child's guardian ad litem in the written permission.

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under this section or s. 48.375 (7) (e).

(ag) Upon request of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon request of the child, if 14 years of age or over, the court shall open for inspection by the parent, guardian, legal custodian or child the records of the court relating to that child, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian or child would result in imminent danger to anyone.

(aj) Upon request of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), upon request of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon request of an unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem the records of the court relating to that expectant mother, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon the written permission of the child, if 14 years of age or over, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or child in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(ap) Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), or of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child

by the unborn child's guardian ad litem in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) Upon request of the department or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department or federal agency.

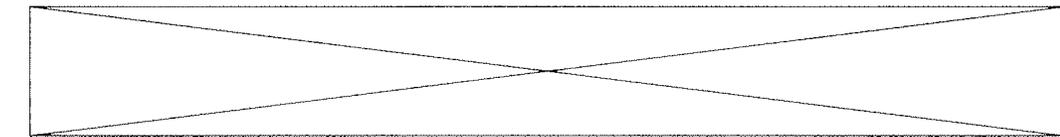
(dm) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under ss. 767.45 to 767.60, the party's attorney or the guardian ad litem for the child who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child for the purpose of determining the paternity of the child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41 (1), the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by the requester its records relating to the paternity of the child or disclose to the requester those records.

(dr) Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(f) Upon request of the department of corrections to review court records for the purpose of obtaining information concerning a child required to register under s. 301.45, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any child who has been found in need of protection or services for an offense specified in s. 301.45 (1g) (a). The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(g) Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 938, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court shall open for inspection by any authorized representative of the requester the records of the

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court relating to any child who has been the subject of a proceeding under this chapter.

(h) Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a child, the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by an authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(5) (a) Any person who is denied access to a record under sub. (1), (1b) or (1d) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.
2. The reason the information is being sought.
3. The basis for the petitioner's belief that the information is contained in the records.
4. The relevance of the information sought to the petitioner's reason for seeking the information.
5. The petitioner's efforts to obtain the information from other sources.

(b) The court shall notify the child, the child's counsel, the child's parents, appropriate law enforcement agencies and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem and appropriate law enforcement agencies, in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(c) The court shall make an inspection, which may be in camera, of the records of the child or expectant mother. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, the court shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making that determination, the court shall balance the interest of the petitioner in obtaining access to the record against the interest of the child or expectant mother in avoiding the stigma that might result from disclosure.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the records of the child or expectant

mother. All records related to a decision under this subsection are confidential.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82.

In the interest of fostering fair and efficient administration of justice, a circuit court has the power to order disclosure of police records. State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 Wis. 2d 435, 267 N.W.2d 309 (1978).

Section 967.06 gives the public defender the right to receive juvenile records of indigent clients notwithstanding s. 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 329 N.W.2d 275 (Ct. App. 1982).

In determining whether to release juvenile court records, the child's best interests are paramount. The child's interests must be weighed against the need of the party seeking the information. The child whose confidentiality interests are at stake must be represented. State v. Bellows, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998), 97-0977.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) (a) and 938.396 (2) (a); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

Juvenile officers are not required to provide information concerning juveniles to school officials. A school does not violate sub. (1) by using information obtained from an officer to take disciplinary actions against a student as long as the school does not reveal the reason for its action. 69 Atty. Gen. 179.

A sheriff's department may, when evaluating an individual for an employment position, consider information in its possession concerning the individual's juvenile record. 67 Atty. Gen. 327 is overruled. 79 Atty. Gen. 89.

SUBCHAPTER VIII

TERMINATION OF PARENTAL RIGHTS

48.40 Definitions. In this subchapter:

(1) Except as otherwise provided, "agency" means the department, a county department or a licensed child welfare agency.

(1g) "Indian parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. "Indian parent" does not include a nonmarital father where paternity has not been acknowledged or established.

(1m) "Kinship care relative" means a person receiving payments under s. 48.57 (3m) (am) for providing care and maintenance for a child.

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

History: 1979 c. 330; 1985 a. 176; 1995 a. 289.

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Parents whose rights have been terminated do not inherit from a child, the child's siblings, whether parental rights as to them have been terminated or not, are the child's heirs. Estate of Pamanet, 46 Wis. 2d 514, 175 N.W.2d 234 (1970). Terminating parental rights. Hayes and Ogorchok. Wis. Law. June 1989.

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

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

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary.

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

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

(d) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, or in which the child's birth parent is a resident of a foreign jurisdiction, the child's birth parent may consent to the termination of any parental rights that he or she may have as provided in par. (a) or (b) or by filing with the court an affidavit witnessed by 2 persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims

all rights to the child, including the right to notice of proceedings under this subchapter.

(e) 1. If an Indian parent or Indian custodian voluntarily consents to a termination of parental rights, such consent shall not be valid unless executed in writing and recorded before the judge under this subsection and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail and were fully understood by the Indian parent or Indian custodian. The court shall also certify that either the Indian parent or the Indian custodian fully understood the explanation in English or that it was interpreted into a language that the Indian parent or Indian custodian understood.

2. Notwithstanding subd. 1., any consent given by an Indian parent or Indian custodian prior to or within 10 days after the birth of the Indian child shall not be valid.

3. In any proceeding under this subsection relating to the parental rights to an Indian child, the voluntary consent of the Indian parent may be withdrawn for any reason at any time prior to the entry of a final order of termination and the child shall be returned to the Indian parent.

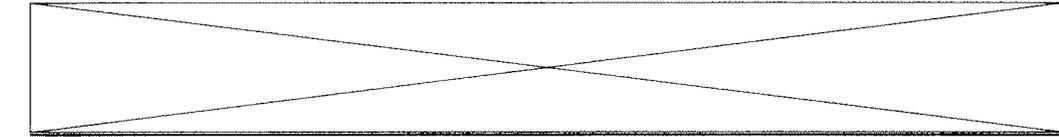
(3) If in any proceeding to terminate parental rights voluntarily a guardian ad litem has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the court. The court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If the court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights under s. 48.415.

History: 1979 c. 330; 1981 c. 384; 1983 a. 352, 447; 1987 a. 383; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1999 a. 83.

Judicial Council Note, 1990: Sub. (3) is repealed and recreated because the so-called substituted judgment permitted therein is bad public policy. New sub. (3) deals with the situation in which there is reason to doubt the competency of a parent who wishes to consent to the termination of his or her parental rights. Any party or guardian ad litem with reason to doubt such competency is required to so inform the court. The court must then make an inquiry in whatever way is appropriate. This may mean a simple discussion with the person, an examination, the appointment of experts to examine the person, a hearing or whatever seems proper in the discretion of the court. If the court finds the person incapable of making an informed and voluntary termination of parental rights, the court must dismiss the proceeding. If appropriate, an involuntary proceeding may then be commenced. A finding that the parent is competent does not obviate the need for a record that he or she has in fact given informed and voluntary consent prior to entry of a termination order. In Interest of D.L.S., 112 Wis. 2d 180, 196-97 (1983). [Re Order effective Jan. 1, 1990]

The minimum information that must be found on the record to support a finding that a minor parent's consent was voluntary and informed is set forth. In Interest of D. L. S. 112 Wis. 2d 180, 332 N.W.2d 293 (1983).

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

(1) **ABANDONMENT.** (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

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

1m. That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22 (14), or death.

1r. That a court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when the child was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

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

(c) Abandonment is not established under par. (a) 2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition

would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a) 2. or 3., whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a) 2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

(1m) **RELINQUISHMENT.** Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the parent has relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger.

(2) **CONTINUING NEED OF PROTECTION OR SERVICES.** Continuing need of protection or services, which shall be established by proving any of the following:

(a) 1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

am. In this subdivision, "active effort" means reasonable efforts which also take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe and which involve and use the available resources of the Indian child's extended family, the Indian child's tribe, Indian social service agencies and individual Indian care givers.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable or, in the case of an Indian child, active effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there

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is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

(am) 1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability, which shall be established by proving that:

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

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

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

(4) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR VISITATION. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

(5) CHILD ABUSE. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

(b) That a child has previously been removed from the parent's home pursuant to a court order under s. 48.345 after an

adjudication that the child is in need of protection or services under s. 48.13 (3) or (3m).

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.

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

(7) INCESTUOUS PARENTHOOD. Incestuous parenthood, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(8) HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

(9) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time

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of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2), the mother of the child may be heard on her desire for the termination of the father's parental rights.

(9m) COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S CHILDREN. (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, "serious felony" means any of the following:

1. The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.

2. The commission of a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 if committed in this state.

3. The commission of a violation of s. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

(10) PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER CHILD. Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) or (10).

(b) That, within 3 years prior to the date the court adjudged the child who is the subject of the petition to be in need of protection or services as specified in par. (a), a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109.

Consent by the mother subsequent to the birth of the child to termination of her parental rights in its best interests so that the child might be placed for adoption constituted an abandonment, and although she was permitted to withdraw that consent by a previous decision of the supreme court, the best interests of the child require modification of the court order to effect a termination of her parental rights. *Lewis v. Lutheran Social Services*, 68 Wis. 2d 36, 227 N.W.2d 643 (1975).

A termination order was not supported by sufficient findings when the findings merely repeated statutory language and made no determination of the best interests of the child. *Termination of Parental Rights to T. R. M.* 100 Wis. 2d 681, 303 N.W.2d 581 (1981).

A parent has constitutionally protected rights to the care, custody, and management of a child. *In Interest of J. L. W.* 102 Wis. 2d 118, 306 N.W.2d 46 (1981).

The dismissal of termination proceedings on grounds of abandonment because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required in one order. *In Interest of K.K.* 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

The abandonment period under sub. (1) (a) 3. need not immediately precede filing of the petition. If abandonment is found, termination is still discretionary. *In Interest of T.P.S.* 168 Wis. 2d 259, 483 N.W.2d 591 (Ct. App. 1992).

While the CHIPS judge must notify the parents of possible termination grounds in the written dispositional order and repeat that information orally to any parent present in court, proof that the oral notice was given is not required in later termination proceedings under sub. (2) (a). *In Interest of D.P.* 170 Wis. 2d 313, 488 N.W.2d 133 (Ct. App. 1992).

A developmentally disabled father's allegation that the county, in violation of the Americans with Disabilities Act, did not take into account his disability in attempting to provide court ordered services was not a basis to attack a termination proceeding. The ADA did not place an added burden on the county to meet the requirements of sub. (2) (b). *In Interest of Torrence P.* 187 Wis. 2d 10, 522 N.W.2d 243 (Ct. App. 1994).

A child "left with" another person under sub. (1) (a) 3. may have been actively placed with the other person by the parent or allowed to live with the other person with the parent's knowledge. *In Interest of Christopher D.* 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

"Disassociated" under sub. (1) (c) is not unconstitutionally vague. Disassociation means more than "failure to visit or communicate" under sub. (1) (a). *In Interest of Christopher D.* 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

The respondent in a TPR case has the right to meaningfully participate, whether physical presence is required must be determined on a case by case basis. Telephone participation may be adequate. *In Interest of Christopher D.* 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

A showing of abandonment under sub. (1) (a) 3. creates a rebuttable presumption that imposes on the parent the burden of disproving abandonment under sub. (1) (c) by showing by a preponderance of the evidence that the parent has not disassociated himself or herself from the child. *Odd S.-G v. Carolyn S.-G.* 194 Wis. 2d 366, 533 N.W.2d 794 (1995).

Termination under sub. (8), due to a murder occurring prior to the adoption of sub. (8), did not violate the prohibition against *ex post facto* laws and did not violate due process, equal protection, or double jeopardy protections. *Winnebago County DSS v. Darrell A.* 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. *State v. Patricia A.P.* 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995), 95-1164.

Sub. (5) does not require an assessment of present and future behavior. The statute refers to past behavior that was a threat to the child's welfare. *Jerry M. v. Dennis L. M.* 198 Wis. 2d 10, 542 N.W.2d 162 (Ct. App. 1995), 95-0075.

For all terminations under sub. (5), there must be a showing that the parent has exhibited a pattern of abusive behavior and a showing under par. (a) or (b). A "conviction" under par. (a) is a conviction after the appeal as of right has been

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exhausted. *Monroe County v. Jennifer V.* 200 Wis. 2d 678, 548 N.W.2d 837 (Ct. App. 1996), 95-3062.

Sub. (7) is a constitutional part of a statutory scheme that is narrowly tailored to meet the state's compelling interests. *State v. Allen M.* 214 Wis. 2d 302, 571 N.W.2d 872 (Ct. App. 1997), 97-0852.

Venue becomes an issue only in the event that it is contested. The county where a child "resides" is the county of domicile. The county where a child "is present" is the county where the child is present at the time a petition is filed. *State v. Corey J. G.* 215 Wis. 2d 395, 572 N.W.2d 845 (1998), 96-3148.

When a parent is prohibited from visitation, communication by phone and letter is not prohibited, and sub. (1) (b) does not apply. Periods in which there has been no contact whatsoever will be counted under sub. (1) (a) 2. and 3. *Carla B. v. Timothy N.* 228 Wis. 2d 695, 598 N.W.2d 924 (Ct. App. 1999), 99-0853.

The rules of civil procedure apply to termination of parental rights proceedings. Directed verdicts are permissible. *Door County DHFS v. Scott S.* 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999), 99-0719.

A guardian ad litem's comments regarding the best interests of the child were not improper. Only when the jury is instructed that it should consider the best interests of the child is there reversible error. *Door County DHFS v. Scott S.* 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999), 99-0719.

Prior to determining that grounds existed to terminate parental rights, the circuit court had the duty at the fact-finding hearing to find by clear and convincing evidence that all of the elements of s. 48.415 (1) (a) 3. had been satisfied. By entering a default judgment against the mother on the issue of abandonment without first taking evidence, the circuit court did not make the finding. The error was subject to a harmless error analysis. *Evelyn C.R. v. Tykila S.* 2001 WI 110, 246 Wis. 2d 1, 629 N.W.2d 768, 00-1739.

In a case under sub. (4), a parent's right to meaningfully participate in the termination proceeding includes the right to present evidence at the fact-finding hearing regarding efforts to meet the conditions for reestablishing visitation. It was error to restrict evidence to whether an order denying visitation had remained in effect for a year. *State v. Frederick H.* 2001 WI App 141, 246 Wis. 2d 215, 630 N.W.2d 734, 00-3035.

Events occurring prior to a CHIPS dispositional order are frequently relevant at a termination proceeding. A history of parental conduct may be relevant to predicting a parent's chances of complying with conditions in the future, despite failing to do so to date. *La Crosse County Department of Human Services v. Tara P.* 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194, 01-3034.

In determining whether "there is a substantial likelihood" that a parent will not meet conditions for the return of his or her children, a parent's relevant character traits and patterns of behavior and the likelihood that any problematic traits or propensities have been or can be modified in order to assure the safety of the children must be considered. *La Crosse County Department of Human Services v. Tara P.* 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194, 01-3034.

A mother's criminal offenses and sentences were relevant to whether she had failed to establish a substantial parental relationship with her children under sub. (6). *State v. Quinsanna D.* 2002 WI App 318, 259 Wis. 2d 429, 655 N.W.2d 752, 02-1919.

Partial summary judgment may be granted in the unfitness phase of a termination case if the moving party establishes that there is no genuine issue as to any material fact regarding the asserted grounds for unfitness, and, taking into consideration the heightened burden of proof specified in s. 48.31 (1) and required by due process, the moving party is entitled to judgment as a matter of law. *Steven V. v. Kelley H.* 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 831, 02-2860.

As applied in this case the incestuous parenthood ground under sub. (7) is not narrowly tailored to advance the compelling state interest underlying the statute. It is fundamentally unfair to terminate parental rights based solely on a parent's status as a victim of incest. *Monroe County DHS v. Kelli B.* 2004 WI 48, 271 Wis. 2d 51, 678 N.W.2d 856, 03-0060.

Jennifer V.'s holding is limited to appeals based on guilt or innocence. When a parent's pending appeal does not raise issues of guilt or innocence, "final judgment of conviction" in sub. (9m) means the judgment of conviction entered by the trial court, either after a verdict of guilty by the jury, a finding of guilty by the court when a jury is waived, or a plea of guilty or no contest. *Reynaldo F. v. Christal M.* 2004 WI App 106, 272 Wis. 2d 816, 684 N.W.2d 138, 03-2687.

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A parent's prior convictions are not so prejudicial as to outweigh their probative value when the information would lead the jury to an understanding of why children are removed from the parent's home. *Reynaldo F. v. Christal M.* 2004 WI App 106, 272 Wis. 2d 816, 684 N.W.2d 138, 03-2687.

Sub. (4) does not violate substantive due process by not requiring any evidence of parental unfitness. There are required steps that must be taken before reaching the application of sub. (4) in a TPR case and those steps form the foundation for the ultimate finding. At each of these steps, findings must be made that reflect on the parent's fitness. *Dane County Department of Human Services v. P. P.* 2005 WI 32, 279 Wis. 2d 169, 694 N.W.2d 344, 03-2440.

The biological father of a nonmarital child satisfies the definition of parent in s. 48.02 (13), as he is a biological parent notwithstanding that he has not officially been adjudicated as the child's biological father, and may have his parental rights terminated based on periods of abandonment that occurred prior to his official adjudication as the child's biological father. *State v. James P.* 2005 WI 80, 281 Wis. 2d 654, 698 N.W.2d 95, 04-0723.

The notice requirement provision of sub. (4) (a) are a part of the clause pertaining to juvenile court orders, and are inapplicable to the clause pertaining to family court orders. The fact that s. 767.24 (4) (d) requires a family court to provide the applicable notice does not establish that provision of the notice is an element of proof under sub. (4). *Kimberly S. S. v. Sebastian X. L.* 2005 WI App 83, ___ Wis. 2d ___, 697 N.W.2d 476, 04-3220.

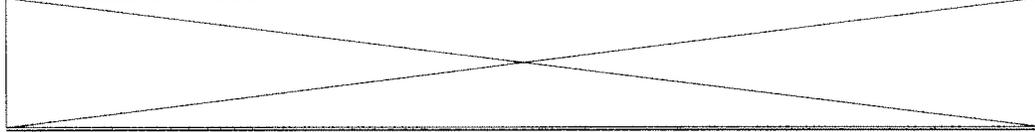
Process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding. A 3-factor test is discussed. *Santosky v. Kramer*, 455 U.S. 745 (1982).

Adoption and termination proceedings in Wisconsin: Straining the wisdom of Solomon. *Hayes and Morse*, 66 MLR 439 (1983).

48.417 Petition for termination of parental rights; when required. (1) FILING OR JOINING IN PETITION; WHEN REQUIRED. Subject to sub. (2), an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 shall file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official shall join in the petition, if any of the following circumstances apply:

(a) The child has been placed outside of his or her home, as described in s. 48.365 (1) or 938.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in by the last day of the 15th month, as described in this paragraph, for which the child was placed outside of his or her home.

(b) A court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when he or she was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state. If the circumstances specified



in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court of competent jurisdiction found that the child was abandoned as described in this paragraph.

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

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

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

(a) The child is being cared for by a fit and willing relative of the child.

(b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

(c) The agency primarily responsible for providing services to the child and the family under a court order, if required under s. 48.355 (2) (b) 6. to make reasonable efforts to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child's permanency plan, the services necessary for the safe return of the child to his or her home.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

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

(4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required under sub. (1), the person who filed or joined in the petition shall notify the department of that filing or joinder.

History: 1997 a. 237; 2001 a. 109.

48.42 Procedure. **(1) PETITION.** A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child's parent, an agency or a person authorized to file a petition under s. 48.25 or 48.835. The petition shall be entitled "In the interest of (child's name), a person under the age of 18" and shall set forth with specificity:

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

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

(c) One of the following:

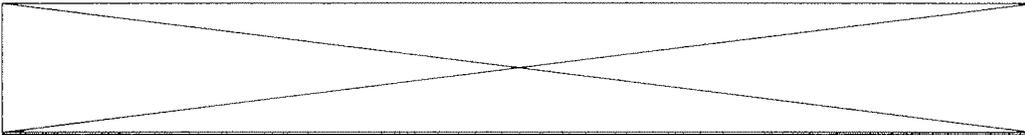
1. A statement that consent will be given to termination of parental rights as provided in s. 48.41.

2. A statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

(d) A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963 and, if the child is subject to the federal Indian child welfare act, the name of the child's tribe.

(1m) VISITATION OR CONTACT RIGHTS. (a) If the petition filed under sub. (1) includes a statement of the grounds for involuntary termination of parental rights under sub. (1) (c) 2.,

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the petitioner may, at the time the petition under sub. (1) is filed, also petition the court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition under sub. (1). Any petition under this paragraph shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

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

(c) Notwithstanding any other order under s. 48.355 (3), the court, subject to par. (e), may grant an injunction prohibiting the respondent from visiting or contacting the child if the court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the court dismisses the petition for termination of parental rights under s. 48.427 (2) or issues an order terminating parental rights under s. 48.427 (3).

(d) A temporary order under par. (b) or an injunction under par. (c) suspends the portion of any order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 setting rules of parental visitation until the termination of the temporary order under par. (b) or injunction under par. (c).

(e) 1. Except as provided in subd. 2., the court shall issue a temporary order and injunction prohibiting a parent of a child from visitation or contact with the child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

2. Subdivision 1. does not apply if the court determines by clear and convincing evidence that the visitation or contact would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

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

(a) The parent or parents of the child, unless the child's parent has waived the right to notice under s. 48.41 (2) (d).

(b) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established:

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

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

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

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

(d) Any other person to whom notice is required to be given by ch. 822, excluding foster parents and treatment foster parents who shall be provided notice as required under sub. (2g).

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

(2g) NOTICE REQUIRED. (a) 1. In addition to causing the summons and petition to be served as required under sub. (2), the petitioner shall also notify any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child of all hearings on the petition. The first notice to any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written, shall have a copy of the petition attached to it, shall state the nature, location, date, and time of the initial hearing and shall be mailed to the last-known address of the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2). Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

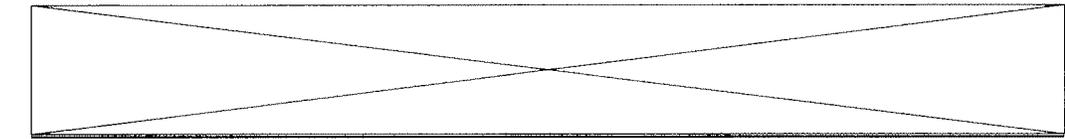
2. ~~If the child may be or is subject to the Indian child welfare act under sub. (1) (d), the petitioner shall also notify the child's tribe of all hearings on the petition. The notice be sent by registered mail with return receipt requested, shall inform the tribe of its right of intervention, shall have a copy of the petition attached to it, and shall state the nature, location, date, and time of any hearing. If the identity or location of the tribe cannot be determined, the notice shall be provided to the secretary of the United States department of the interior, who shall have 15 days after receipt of the notice to provide the requisite notice to the child's tribe. No termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the Indian child's parent or Indian custodian and the tribe or the secretary of the United States department of the interior. The Indian child's parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.~~

(am) The court shall give a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (a) an opportunity to be heard

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at the hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under par. (a) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(b) Failure to give notice under par. (a) 1 to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under par. (a) 1, that person may request a rehearing on the matter at any time prior to the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall order a rehearing.

(2m) NOTICE NOT REQUIRED. Except as provided in this subsection, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this subsection has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this subsection for conduct which may have led to the child's conception. A person who under this subsection is not given notice does not have standing to appear and contest a petition for the termination of his parental rights. This subsection does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

(3) CONTENTS OF SUMMONS. The summons shall:

- (a) Contain the name and birth date of the child, and the nature, location, date and time of the initial hearing.
- (b) Advise the party, if applicable, of his or her right to legal counsel, regardless of ability to pay under s. 48.23 and ch. 977.
- (c) Advise the parties of the possible result of the hearing and the consequences of failure to appear or respond.
- (d) Advise the parties that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after the judgment is entered for the right to pursue such relief to be preserved.

(4) MANNER OF SERVING SUMMONS AND PETITION. (a) *Personal service.* Except as provided under sub. (2g) (a) 2, a copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 7 days

before the date of the hearing, except that service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

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

2. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated, the court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd. 4.

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

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

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

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

(c) The notice under par. (a) or (b) shall also inform the parties:

1. That the parental rights of a parent or alleged parent who fails to appear may be terminated;

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2. Of the party's right to have an attorney present and that if a person desires to contest termination of parental rights and believes that he or she cannot afford an attorney, the person may ask the state public defender to represent him or her; and

3. That if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after judgment is entered for the right to pursue such relief to be preserved.

History: 1973 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447; 1985 a. 94; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395, 446; 1995 a. 108, 225, 275, 352; 1997 a. 35, 80, 191, 237; 1999 a. 9, 83.

Judicial Council Note, 1986: Subs. (3) (d) and (4) (c) are amended to require notice to the parties of the time and manner for initiating an appeal from a judgment terminating parental rights. [Re Order eff. 7-1-87]

Guardianship and TPR proceedings are custody proceedings, guardianship and TPR determinations are custody determinations, and guardianship and TPR determinations are custody decrees, all governed by ch. 822. In Interest of A.E.H. 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

Sub. (2m) denies a putative father standing to contest the alleged grounds for termination when the child was conceived as the result of sexual assault. Termination of Parental Rights to A. M. 176 Wis. 2d 673, 500 N.W.2d 649 (1993).

Sub. (2) (d) requires consideration in each case of whether ch. 822 applies but does not require the application of ch. 822 to intrastate cases. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

Sub. (2) is the exclusive statute for determining what parties may be summoned; intervention under s. 803.09 does not apply. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

Sexual assault under sub. (2m) does not include a violation of s. 948.09, sexual intercourse with a child age 16 or older. Paternity of Michael A.T. 182 Wis. 2d 395, 513 N.W.2d 669 (Ct. App. 1994).

The doctrines of claims and issue preclusion may apply in TPR cases. Brown County Department of Human Services v. Torrance M. 2005 WI App 57, 280 Wis. 2d 396, 694 N.W.2d 458, 04-2379.

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

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

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

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

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

(6) (a) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

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

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

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

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

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

(bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child or a member of the Indian child's extended family, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913 (7). The court shall review the report to determine whether any payments or agreement to make payments set forth

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

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

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

(9) (a) If a petition for termination of the rights of a birth parent, as defined under s. 48.432 (1) (am), is filed by a person other than an agency enumerated under s. 48.069 (1) or (2) or if the court waives the report required under s. 48.425, the court shall order any parent whose rights may be terminated to file with the court the information specified under s. 48.425 (1) (am).

(b) If a birth parent does not comply with par. (a), the court shall order any health care provider as defined under s. 146.81 (1) known to have provided care to the birth parent or parents to provide the court with any health care records of the birth parent or parents that are relevant to the child's medical condition or genetic history. A court order for the release of alcohol or drug abuse treatment records subject to 21 USC 1175 or 42 USC 4582 shall comply with 42 CFR 2.

History: 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 447 ss. 10, 67; 1985 a. 176; 1997 a. 104.

The court erred by failing to inform parents of the right to jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 342 N.W.2d 410 (1984).

Concurrent TPR/adoption proceedings under s. 48.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W.2d 359 (Ct. App. 1992).

A court's failure to inform parents of their rights under this section is not reversible error absent prejudice to the parents. Interest of Robert D. 181 Wis. 2d 887, 512 N.W.2d 227 (Ct. App. 1994).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (1). There are no provisions for waiver of time limits, and the only provisions for delays, continuances, and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927, 99-2487.

This section does not require the circuit court to advise nonpetitioning parties of the right under sub. (5) to a continuance to consult with counsel regarding judicial

substitution. Steven V. v. Kelley H. 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 831, 02-2860.

A competency challenge based on the violation of the statutory time limitation of sub. (2) cannot be waived, even though it was not raised in the circuit court. Sheboygan County Department of Social Services v. Matthew S. 2005 WI 84, 282 Wis. 2d 150, 698 N.W.2d 631, 04-0901.

Due process does not require appointment of counsel for indigent parents in every parental status termination proceeding. Lassiter v. Dept. of Social Services, 452 U.S. 18 (1981).

48.423 Rights of persons alleging paternity. (1)

Except as provided in sub. (2), if a man who alleges that he is the father of the child appears at the hearing and wishes to contest the termination of his parental rights, the court shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the man claiming to be the father of the child of any right to counsel under s. 48.23. The man claiming to be the father of the child must prove paternity by clear and convincing evidence.

(2) If the hearing involves an Indian child, if a man who alleges that he is the father of the Indian child appears at the hearing and wishes to contest the termination of his parental rights, the court shall set a date for the hearing on the issue of paternity pursuant to the notification requirements for an Indian parent, Indian custodian, or the child's tribe under s. 48.42 (2g) (a) 2. The court shall inform the man claiming to be the father of the child of any right to counsel under s. 48.23. The man claiming to be the father of the child must prove paternity by clear and convincing evidence.

History: 1979 c. 330.

Putative father's right to custody of his child. 1971 WLR 1262.

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

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

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

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

(4) If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay

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making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if:

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

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

History: 1979 c. 330; 1987 a. 383.

Although the best interests of the child standard does not apply to the fact-finding hearing, the guardian ad litem can represent the interests of the child to develop the facts as they relate to whether the grounds for termination exist. When a jury is the fact-finder, the guardian ad litem should be permitted to exercise peremptory challenges in jury selection. Interest of C.E.W. 124 Wis. 2d 47, 368 N.W.2d 47 (1985).

Despite jury findings that grounds for termination exist, the court may dismiss a termination petition if evidence does not support the jury's finding or if the evidence of unfitness is not so egregious as to warrant termination; whether the evidence supports termination is a matter of discretion. In Interest of K.D.J. 163 Wis. 2d 90, 470 N.W.2d 914 (1991).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (4). There are no provisions for waiver of time limits, and the only provisions for delays, continuances and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927, 99-2487.

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

- (a) The social history of the child.
- (am) A medical record of the child on a form provided by the department which shall include:
1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.
 2. A report of any medical examination which either birth parent had within one year before the date of the petition.
 3. A report describing the child's prenatal care and medical condition at birth.
 4. The medical and genetic history of the child and any other relevant medical and genetic information.
- (b) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the

child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned safely to the family, and the steps the person or agency has taken to effect this return. If the child is an Indian child, the report shall also indicate that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(d) A statement of other appropriate services, if any, which might allow the child to return safely to the home of the parent.

(e) A statement applying the standards and factors enumerated in s. 48.426 (2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (3m) (a) 1. to 4. and include a presentation of the factors which might prevent adoption, those which would facilitate it, and the agency which would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427 (3m) (a) 1. to 4. determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child, a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian of the child, or a recommendation that a guardian be appointed for the child under s. 48.977 (2).

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

(2) The court may waive the report required under this section if consent is given under s. 48.41, but shall order the birth parent or parents to provide the department with the information specified under sub. (1) (am).

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

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275; 1997 a. 237; 2005 a. 25.

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

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

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(b) If the child is an Indian child, notwithstanding the standard under par. (a), the court may not order a termination of parental rights to the Indian child unless the court makes a finding supported by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

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

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.
- (e) The duration of the separation of the parent from the child.
- (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

History: 1979 c. 330.

When grandparents opposing termination had a substantial relationship with the child and wished to participate in the proceedings, it was error to exclude their testimony in determining the child's best interest. In *Interest of Brandon* S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

A termination of parental rights works a legal severance of the relationship between the child and the child's birth family. Sub. (3) (c) requires an examination of the harmful effect of the legal severance on the child's relationships with the birth family. The court may consider an adoptive parent's promise to continue the relationship, but it is not bound to hinge its determination on that legally unenforceable promise. *State v. Margaret H.* 2000 WI 42, 234 Wis. 2d 606, 610 N.W.2d 475, 99-1441.

48.427 Dispositions. (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

(1m) In addition to any evidence presented under sub. (1), the court shall give the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior

to disposition, relevant to the issue of disposition. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2) The court may dismiss the petition if it finds that the evidence does not warrant the termination of parental rights.

(3) The court may enter an order terminating the parental rights of one or both parents.

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall do one of the following:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).
3. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.
4. The department.
5. A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative.
6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1. to 4. and custody of the child to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(c) Appoint a guardian under s. 48.977 and transfer guardianship and custody of the child to the guardian.

(3p) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has been appointed under s. 48.977, the court may enter one of the orders specified in sub. (3m) (a) or (b). If the court enters an order under this subsection, the court shall terminate the guardianship under s. 48.977.

(4) If the rights of one or both parents are terminated under sub. (3), the court may enter an order placing the child in sustaining care under s. 48.428.

(6) If an order is entered under sub. (3), the court shall:

- (a) Inform each birth parent, as defined under s. 48.432 (1) (am), whose rights have been terminated of the provisions of ss. 48.432, 48.433 and 48.434.
- (b) Forward to the department:

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1. The name and date of birth of the child whose birth parent's rights have been terminated.

2. The names and current addresses of the child's birth parents, guardian and legal custodian.

3. The medical and genetic information obtained under s. 48.422 (9) or 48.425 (1) (am) or (2).

(7) (a) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10).

(b) In addition to the notice permitted under par. (a), any written order under sub. (3) may notify the parent or parents of the information specified in par. (a).

History: 1979 c. 330; 1981 c. 81, 359; 1985 a. 70, 176; 1995 a. 275, 289; 1997 a. 80, 104, 237; 2005 a. 25.

Once a basis for termination has been found by the jury and confirmed with a finding of unfitness by the court, the court must move to the dispositional hearing in which the prevailing factor is the best interests of the child. A court should not dismiss a petition for termination at a dispositional hearing unless it can reconcile dismissal with the best interests of the child. Sheboygan County D.H.S.S. v. Julie A.B. 2002 WI 95, 255 Wis. 2d 170, 648 N.W.2d 402, 01-1692.

48.428 Sustaining care. (1) A court may place a child in sustaining care if the court has terminated the parental rights of the parent or parents of the child or has appointed a guardian for the child under s. 48.831 and the court finds that the child is unlikely to be adopted or that adoption is not in the best interest of the child.

(2) (a) Except as provided in par. (b), when a court places a child in sustaining care after an order under s. 48.427 (4), the court shall transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent, licensed treatment foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

(b) When a court places a child in sustaining care after an order under s. 48.427 (4) with a person who has been appointed as the guardian of the child under s. 48.977 (2), the court may transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, that licensed foster parent, licensed treatment foster

parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3). If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4., the court shall terminate the guardianship under s. 48.977.

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

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

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

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

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

(e) The authority to act as the child's parent under subch. V of ch. 115 and s. 118.125.

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

(6) (a) Except as provided in par. (b), the court may order or prohibit visitation by a birth parent of a child placed in sustaining care.

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a birth parent of a child who has been placed in sustaining care if the birth parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other birth parent, and the conviction has not been reversed, set aside or vacated.

1m. Except as provided in subd. 2., if a birth parent who is granted visitation rights with a child under par. (a) is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other birth parent, and the conviction has not been reversed, set aside or vacated, the court shall issue an order

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prohibiting the birth parent from having visitation with the child on petition of the child, the guardian or legal custodian of the child, or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the birth parent.

2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359 s. 16; 1985 a. 70; 1985 a. 176; 1989 a. 161; 1993 a. 446; 1995 a. 275, 289; 1997 a. 27, 164; 1999 a. 9.

48.43 Court orders; contents and effect; review. (1) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. If the court dismisses the petition under s. 48.427 (2), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427 (3), the order shall contain all of the following:

(a) The identity of any agency or individual that has received guardianship of the child or will receive guardianship or custody of the child upon termination and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

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

(c) If an agency receives custody of the child under par. (a), the child's permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan, the agency shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within 60 days from the date of the order.

(d) A finding that the termination of parental rights is in the best interests of the child and, if the child is an Indian child, a finding under s. 48.426 (2) (b).

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

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

(4) A certified copy of the order terminating parental rights shall be furnished by the court to the agency given guardianship for placement for adoption of the child or to the person or agency given custodianship or guardianship for placement of the child in sustaining care and to the person appointed as the

guardian of the child under s. 48.977 (2). The court shall, upon request, furnish a certified copy of the child's birth certificate and a transcript of the testimony in the termination of parental rights hearing to the same person or agency. ~~(5) (a) If the custodian specified in sub. (1) (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child is adopted or reaches 18 years of age, whichever is sooner. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any, and shall describe any progress that has been made in finding a permanent placement for the child.~~

~~(b) 1. The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (a). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's guardian, the child, if he or she is 12 years of age or over, and the child's foster parent, treatment foster parent, other physical custodian described in s. 48.62 (2) or the operator of the facility in which the child is living.~~

~~2. In the case of an Indian child, notice shall also be provided to the child's tribe and shall be sent by registered mail with return receipt requested. If the identity or location of the tribe cannot be determined, the notice shall be to the secretary of United States department of the interior, who shall have 15 days after receipt to provide the requisite notice to the tribe. The permanency plan hearing shall not be held until at least 10 days after receipt of notice by the tribe or the secretary of the United States department of the interior. The tribe shall, upon request, be granted up to 20 additional days to prepare for the hearing.~~

(c) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c), except the determinations relating to the child's parents. The court may amend the order under sub. (1) to transfer the child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1. to 4. which consents to the transfer, if the court determines that the transfer is in the child's best interest. If an order is amended, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

(5m) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child, if he or she is 12 years of age or

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over, to the child's tribe if the child is an Indian child, and to the child's foster parent, the child's treatment foster parent, or the operator of the facility in which the child is living.

(6) (a) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107.

(b) If the child is an Indian child, the Indian child or any Indian parent or Indian custodian from whose custody the child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the termination of parental rights upon a showing that the termination violated any provision of 25 USC 1911, 1912, or 1913.

(7) If the agency specified under sub. (1) (a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department. The court shall transfer the child's custody to the county department specified in the petition. The department shall remain the child's guardian.

History: 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237.

The appeal process in a termination case must be commenced within 30 days after the order is entered. In Interest of J.D. 106 Wis. 2d 126, 315 N.W.2d 365 (1982).

Termination has the same effect on relationships between members of the biological parents' families and the child as it has on the parent-child relationship. Equitable considerations did not form a basis to allow biological grandparents to obtain visitation rights after termination and adoption. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998), 97-3595.

48.432 Access to medical information. (1) In this section:

(a) "Adoptee" means a person who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(ag) "Agency" means a county department or a licensed child welfare agency.

(am) "Birth parent" means either:

1. The mother designated on the individual's or adoptee's original birth certificate.

2. One of the following:

a. The adjudicated father.

b. If there is no adjudicated father, the husband of the mother at the time the individual or adoptee is conceived or born, or when the parents intermarry under s. 767.60.

(b) "Individual" means a person whose birth parent's rights have been terminated in this state at any time.

(2) (a) The department, or agency contracted with under sub. (9), shall maintain all information obtained under s. 48.427

(6) (b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department, or agency contracted with under sub. (9), any relevant medical or genetic information about the child or the child's birth parents, and the department or agency shall maintain the information in the centralized birth record file.

(3) (a) The department, or agency contracted with under sub. (9), shall release the medical information under sub. (2) to any of the following persons upon request:

1. An individual or adoptee 18 years of age or older.

2. An adoptive parent of an adoptee.

3. The guardian or legal custodian of an individual or adoptee.

4. The offspring of an individual or adoptee if the requester is 18 years of age or older.

5. An agency or social worker assigned to provide services to the individual or adoptee or place the individual for adoption.

(b) Before releasing the information under par. (a), the department, or agency contracted with under sub. (9), shall delete the name and address of the birth parent and the identity of any provider of health care to the individual or adoptee or to the birth parent.

(c) The person making a request under this subsection shall pay a fee for the cost of locating, verifying, purging, summarizing, copying and mailing the medical or genetic information according to a fee schedule established by the department, or agency contracted with under sub. (9), based on ability to pay. The fee may not be more than \$150 and may be waived by the department or agency.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about an individual whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such an individual or adoptee, and the information is not on file with the department, or agency contracted with under sub. (9), the person may request that the department or agency conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the individual or adoptee has or may have acquired a genetically transferable disease or that the individual's or adoptee's medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department, or agency contracted with under sub. (9), shall undertake a diligent search for the individual's or adoptee's parents.

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