



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0241/P1  
EAW:amn&cjs

P2

in 9/25  
due: 9/28

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

insert

SA ✓  
Pw ✓

Regent

1 **AN ACT to renumber and amend** 54.56, 54.57 and 808.075 (4) (f) 3.; **to amend**  
2 48.02 (8), 48.023 (intro.), 48.023 (3), 48.023 (4), 48.09 (5), 48.14 (2) (b), 48.14 (11),  
3 48.15, 48.185 (2), 48.235 (1) (c), 48.299 (4) (a), 48.299 (4) (b), 48.299 (6) (intro.),  
4 48.299 (6) (d), 48.299 (7), 48.345 (3) (a), 48.368 (1), 48.62 (2), 48.831 (1), 48.831  
5 (1m) (e), 48.977 (8), 48.978 (7), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18. c., 54.01 (10),  
6 54.10 (1), 54.52 (1), 55.03 (1), 115.76 (12) (b) 2., 118.125 (2) (L), 146.82 (2) (a) 9.  
7 a., 146.82 (2) (a) 9. c., 757.69 (1) (g) 5., 808.075 (4) (a) 11., 814.66 (1) (m) and  
8 938.345 (1) (e); and **to create** 48.235 (3) (c), 48.976, 48.977 (4) (cm) 1m., 48.978  
9 (2) (d) 1m., 48.981 (7) (a) 11v., 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the  
10 statutes; **relating to:** guardianships of children.

**Analysis by the Legislative Reference Bureau**

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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

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

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

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

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

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

12           48.023 (3) The right and duty of reasonable visitation of with the child and,  
13 subject to an order of a court of competent jurisdiction, the authority to determine  
14 reasonable visitation with the child. The guardian's decision regarding visitation is  
15 presumed to be in the best interest of the child and, if the court reviews the decision,  
16 the petitioner has the burden of proving by clear and convincing evidence that the  
17 decision of the guardian is not in the best interest of the child.

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

19           48.023 (4) The rights and responsibilities of physical custody and legal custody,  
20 which may include the right to change the residence of the child from this state to  
21 another state, except when physical custody or legal custody has been vested in

1 another person or when the child is under the supervision of the department of  
2 corrections under s. 938.183, 938.34 (2), (4h), (4m), or (4n), or 938.357 (3) or (4) or the  
3 supervision of a county department under s. 938.34 (2), (4d), (4m), or (4n).

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

5 48.09 (5) By the district attorney or, if designated by the county board of  
6 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,  
7 48.976, or 48.977. If the county board transfers this authority to or from the district  
8 attorney on or after May 11, 1990, the board may do so only if the action is effective  
9 on September 1 of an odd-numbered year and the board notifies the department of  
10 administration of that change by January 1 of that odd-numbered year.

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

12 48.14 (2) (b) The appointment and removal of a guardian of the person for a  
13 child under ss. 48.427, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977, and  
14 48.978 and ch. 54 and for a child found to be in need of protection or services under  
15 s. 48.13 because the child is without parent or guardian.

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

17 48.14 (11) Granting visitation privileges under s. 54.56 48.976 (11).

18 **SECTION 8.** 48.15 of the statutes is amended to read:

19 **48.15 Jurisdiction of other courts to determine legal custody.** Except  
20 as provided in s. ss. 48.028 (3) and 48.976 (2) (a) 2., nothing in this chapter deprives  
21 another court of the right to determine the legal custody of a child by habeas corpus  
22 or to determine the legal custody or guardianship of a child if the legal custody or  
23 guardianship is incidental to the determination of an action pending in that court.  
24 Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise  
25 jurisdiction under this chapter and ch. 938 is paramount in all cases involving

1 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn  
2 children and their expectant mothers alleged to come within the provisions of ss.  
3 48.133 and 48.14 (5).

4 SECTION 9. 48.185 (2) of the statutes is amended to read:

5 48.185 (2) GUARDIANSHIP AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. In  
6 an action under s. 48.41, venue shall be in the county where the birth parent or child  
7 resides at the time that the petition is filed. Subject to sub. (5), venue for any  
8 proceeding under s. 48.976 or 48.977 or any proceeding under subch. VIII when the  
9 child has been placed outside the home pursuant to a dispositional order under s.  
10 48.345 or 48.347, shall be in the county where the dispositional order was issued,  
11 unless the child's county of residence has changed or the parent of the child has  
12 resided in a different county of this state for 6 months. In either case, the court may,  
13 upon a motion and for good cause shown, transfer the case, along with all appropriate  
14 records, to the county of residence of the child or parent.

*The*  
INS 4-12

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

16 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is  
17 the subject of a proceeding to terminate parental rights, whether voluntary or  
18 involuntary, for a child who is the subject of a contested adoption proceeding, and for  
19 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

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

21 48.235 (3) (c) In addition to any other duties and responsibilities required of  
22 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of  
23 a proceeding under s. 48.976 shall do all of the following unless granted leave by the  
24 court not to do so:

*48.980 (3)*  
*Including those under s. 48.235(3)*  
INS 4-24  
this section

*Move  
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line 22*

*guardian ad litem*  
*ad litem*  
*ad litem*

1 1. Personally, or through a trained designee, meet with or observe the child,  
2 assess the appropriateness and safety of the environment of the child, and, if  
3 appropriate to the age and developmental level of the child, interview the child and  
4 determine the child's goals and concerns regarding the proposed guardianship. If the  
5 child is 12 years of age or over, the guardian ad litem shall also advise the child that  
6 he or she may request the appointment of counsel or retain counsel of his or her own  
7 choosing.

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

11 (b) ③ Attend all court proceedings relating to the guardianship, present evidence  
12 concerning the best interests of the child, if necessary, and make clear and specific  
13 recommendations to the court concerning the best interests of the child at every stage  
14 of the proceedings.

15 (c) ④ Report to the court on any matter <sup>related to his or her duties</sup> that the court requests.

16 (d) ⑤ To the extent necessary to make recommendations to the court concerning  
17 the best interests of the child, to report to the court concerning the suitability of the  
18 proposed guardian to serve as guardian of the child and on any other matter that the  
19 court requests, and otherwise to fulfill the duties and responsibilities required of the  
20 guardian ad litem in the proceedings, inspect reports and records relating to the child  
21 and, upon presentation of necessary releases, <sup>stay</sup> the child's family and the proposed  
22 guardian, including law enforcement reports and records under ss. 48.396 (1) and  
23 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare  
24 agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports  
25 and records under s. 48.981 (7) (a) 11v., pupil records under s. 118.125 (2) (L), mental

1 health records under s. 51.30 (4) (b) 4., and health care records under s. 146.82 (2)  
2 (a) 4. The court shall include in the order appointing the guardian ad litem an order  
3 requiring the custodian of any report or record specified in this subdivision to permit  
4 the guardian ad litem to inspect and copy the report or record on presentation by the  
5 guardian ad litem of a copy of the order. A guardian ad litem who obtains access to  
6 a report or record described in this subdivision shall keep the information contained  
7 in the report or record confidential and may use or further disclose that information  
8 only for purpose of the proceedings.

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

10 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at  
11 the fact-finding hearings under ss. 48.31, 48.42, ~~48.976~~<sup>795</sup>, 48.977 (4) (d), and 48.978  
12 (2) (e) and (3) (f) 2. *and*

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

14 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
15 statutory rules of evidence are binding at a hearing for a child held in custody under  
16 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a  
17 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing  
18 about changes in placement, trial reunifications, revision of dispositional orders,  
19 extension of dispositional orders, or termination of guardianship orders entered  
20 under s. ~~48.976~~<sup>125</sup>, 48.977 (4) (h) 2. or (6), <sup>or</sup> 48.978 (2) (j) 2. or (3) (g). At those hearings,  
21 the court shall admit all testimony having reasonable probative value, but shall  
22 exclude immaterial, irrelevant, or unduly repetitious testimony or evidence that is  
23 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has  
24 demonstrable circumstantial guarantees of trustworthiness. The court shall give  
25 effect to the rules of privilege recognized by law. The court shall apply the basic

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

4 **SECTION 14.** 48.299 (6) (intro.) of the statutes is amended to read:

5 ~~192~~ 48.299 (6) (intro.) If a man who has been given notice under s. 48.27 (3) (b) 1.,  
6 ~~102~~ 48.976 (3) (c) 1., 48.977 (4) (c) 1., or 48.978 (2) (c) 1. appears at any hearing for which  
7 he received the notice, alleges that he is the father of the child, and states that he  
8 wishes to establish the paternity of the child, all of the following apply:

9 **SECTION 15.** 48.299 (6) (d) of the statutes is amended to read:

10 48.299 (6) (d) The court may stay the proceedings under this chapter pending  
11 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court  
12 determines that the paternity proceedings will not unduly delay the proceedings  
13 under this chapter and the determination of paternity is necessary to the court's  
14 disposition of the child ~~if the child is found to be in need of protection or services~~  
15 proceeding or if the court determines or has reason to know that the paternity  
16 proceedings may result in a finding that the child is an Indian child and in a petition  
17 by the child's parent, Indian custodian, or tribe for transfer of the proceeding to the  
18 jurisdiction of the tribe.

19 **SECTION 16.** 48.299 (7) of the statutes is amended to read:

20 48.299 (7) If a man who has been given notice under s. 48.27 (3) (b) 1., 48.976  
21 (3) (c) 1., 48.977 (4) (c) 1., or 48.978 (2) (c) 1. appears at any hearing for which he  
22 received the notice but does not allege that he is the father of the child and state that  
23 he wishes to establish the paternity of the child or if no man to whom such notice was  
24 given appears at a hearing, the court may refer the matter to the state or to the  
25 attorney responsible for support enforcement under s. 59.53 (6) (a) for a

1 determination, under s. 767.80, of whether an action should be brought for the  
2 purpose of determining the paternity of the child.

3 **SECTION 17.** 48.345 (3) (a) of the statutes is amended to read:

4 48.345 (3) (a) The home of a parent ~~or~~, other relative, or guardian of the child,  
5 except that the judge may not designate the home of a parent ~~or~~, other relative, or  
6 guardian of the child as the child's placement if the parent ~~or~~, other relative, or  
7 guardian has been convicted under s. 940.01 of the first-degree intentional homicide,  
8 or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child,  
9 and the conviction has not been reversed, set aside or vacated, unless the judge  
10 determines by clear and convincing evidence that the placement would be in the best  
11 interests of the child. The judge shall consider the wishes of the child in making that  
12 determination.

13 **SECTION 18.** 48.368 (1) of the statutes is amended to read:

14 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41  
15 or 48.415 or an appeal from a judgment terminating or denying termination of  
16 parental rights is filed during the year in which a dispositional order under s. 48.355,  
17 an extension order under s. 48.365, a voluntary agreement for placement of the child  
18 under s. 48.63, or a guardianship order under ch. 54, 2017 stats., or ch. 880, 2003  
19 stats., or s. ~~48.976~~ or 48.977 or ch. 54 <sup>plain</sup> is in effect, the dispositional or extension order,  
20 voluntary agreement, or guardianship order shall remain in effect until all  
21 proceedings related to the filing of the petition or an appeal are concluded.

22 **SECTION 19.** 48.62 (2) of the statutes is amended to read:

23 48.62 (2) A relative, a guardian of a child, or a person delegated care and  
24 custody of a child under s. 48.979 who provides care and maintenance for the child  
25 is not required to obtain the license specified in this section. The department, county



1 department, or licensed child welfare agency as provided in s. 48.75 may issue a  
 2 license to operate a foster home to a relative who has no duty of support under s. 49.90  
 3 (1) (a) and who requests a license to operate a foster home for a specific child who is  
 4 either placed by court order or who is the subject of a voluntary placement agreement  
 5 under s. 48.63. The department, a county department, or a licensed child welfare  
 6 agency may, at the request of a guardian appointed under s. ~~48.976, 48.977, or~~<sup>JAB</sup>  
 7 ~~48.978,~~<sup>plan</sup> or ch. 54, 2017 stats., or ch. 880, 2003 stats., license the guardian's home as  
 8 a foster home for the guardian's minor ward who is living in the home and who is  
 9 placed in the home by court order. Relatives with no duty of support and guardians  
 10 appointed under s. ~~48.976, 48.977, or 48.978,~~<sup>or</sup> ~~or~~<sup>plan</sup> ch. 54, 2017 stats., or ch. 880, 2003  
 11 stats., who are licensed to operate foster homes are subject to the department's  
 12 licensing rules.

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

14 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment  
 15 of a guardian of a child who does not have a living parent if a finding as to the  
 16 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~  
 17 ~~s. 48.976~~<sup>JAB</sup> applies to the appointment of a guardian for a child who does not have a  
 18 living parent for all other purposes. An appointment of a guardian of the estate of  
 19 a child who does not have a living parent shall be conducted in accordance with the  
 20 procedures specified in ch. 54.

21 **SECTION 21.** 48.831 (1m) (e) of the statutes is amended to read:

22 48.831 (1m) (e) A guardian appointed under s. ~~48.976~~<sup>JAB</sup> or ch. 54, 2017 stats., or  
 23 ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court  
 24 under s. ~~48.976~~<sup>JAB</sup> (10) or s. 54.54 (1), 2017 stats., or s. 880.17 (1), 2003 stats.

25 **SECTION 22.** 48.976 of the statutes is created to read:

Insert  
30-15

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

2            DEFINITIONS. In this section:

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

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

5            a. The child, if he or she has attained 12 years of age, and the child's guardian  
6            ad litem and counsel, if any.

7            b. The child's parent, guardian, legal custodian, and physical custodian.

8            c. Any person who has filed a declaration of paternal interest under s. 48.025,  
9            who is alleged to the court to be the father of the child, or who may, based on the  
10           statements of the mother or other information presented to the court, be the father  
11           of the child.

12           d. Any individual who is nominated as guardian or as a successor guardian.

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

16           f. If the child is receiving or in need of any public services or benefits, the county  
17           department or, in a county having a population of 750,000 or more, the department  
18           that is providing the services or benefits, through district attorney, corporation  
19           counsel, or other officials designated under s. 48.09.

20           g. If the child is an Indian child, the Indian child's Indian custodian and Indian  
21           tribe.

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

23           2. For purposes of proceedings subsequent to an order for guardianship of a  
24           child, any of the following:

1 a. The child, if the child has attained 12 years of age, the child's guardian ad  
2 litem, and the child's counsel.

3 b. The child's parent and guardian.

4 c. The county of venue, through the district attorney, corporation counsel, or  
5 other official designated under s. 48.09, if the county has an interest in the  
6 guardianship.

7 d. If the child is an Indian child, the Indian child's tribe.

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

9 (b) "Party" means the person petitioning for the appointment of a guardian for  
10 a child or any interested person other than a person who is alleged to the court to be  
11 the father of the child or who may, based on the statements of the mother or other  
12 information presented to the court, be the father of the child.

13 **(2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY.** (a) *Appointment.* 1. This  
14 section may be used for the appointment of a guardian of the person for a child. An  
15 appointment of a guardian of the estate of a child shall be conducted under the  
16 procedures specified in ch. 54. If the court assigned to exercise jurisdiction under this  
17 chapter has jurisdiction over a proceeding for the appointment of a guardian of the  
18 person for a child or continuing jurisdiction over such a guardianship and the court  
19 assigned to exercise probate jurisdiction has jurisdiction over a proceeding for the  
20 appointment of a guardian of the estate of the child or continuing jurisdiction over  
21 such a guardianship, the court assigned to exercise jurisdiction under this chapter  
22 may order those proceedings or guardianships to be consolidated under the  
23 jurisdiction of the court assigned to exercise jurisdiction under this chapter. Upon  
24 such consolidation, the court assigned to exercise jurisdiction under this chapter  
25 shall order all records relating to the guardianship of the estate of the child to be

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1 transferred to the court assigned to exercise jurisdiction under this chapter and that  
2 court shall retain those records as required under SCR chapter 72. This section does  
3 not prohibit a person from petitioning a court under s. 48.831, 48.977, or 48.978 for  
4 the appointment of a guardian of the person for a child.

5 2. If the proposed ward is the subject of an action pending under s. 48.13 or  
6 48.14 or ch. 938, any subsequent petition filed under this section shall be heard by  
7 the court authorized to exercise jurisdiction over the pending action. The court shall  
8 stay a guardianship proceeding for the appointment of a full, limited, or temporary  
9 guardian of the person for a child under par. (c) 1., 2., or 3. until the action pending  
10 under s. 48.13 or 48.14 or ch. 938 is resolved. The court may appoint an emergency  
11 guardian under sub. (b) while an action is pending under s. 48.13 or 48.14 or ch. 938  
12 if the court finds that the best interests of the child require the immediate  
13 appointment of a guardian.

14 3. A petition filed under this section may not change an order entered pursuant  
15 to a finding under s. 48.13, 938.12, or 938.13, or an order transferring guardianship  
16 to an agency pursuant to s. 48.427 (3m).

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

21 (b) *Nomination by parent or child.* 1. A parent may nominate a guardian and  
22 successor guardian for any of his or her children who is in need of guardianship,  
23 including a nomination by will. Subject to the rights of a surviving parent, the court  
24 shall appoint the person nominated as guardian or successor guardian, unless the

1 court finds that appointment of the person nominated is not in the child's best  
2 interests.

3 2. A child who has attained 12 years of age may nominate his or her own  
4 guardian, but if the child is outside of the state or if other good reason exists, the court  
5 may dispense with the child's right of nomination. If neither parent of a child who  
6 has attained 12 years of age is fit, willing, and able to carry out the duties of a  
7 guardian, the court may appoint the nominee of the child.

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

13 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.  
14 5., a guardian appointed under sub. (3) (g) 2. shall have all of the duties and authority  
15 specified in s. 48.023, unless those duties and that authority are limited under subd.  
16 2. A guardian appointed under sub. (3) (g) 2. shall also immediately notify the court  
17 that appointed the guardian of any change in the address of the guardian or child and  
18 shall make an annual report to that court on the condition of the child. The report  
19 shall include the location of the child, the health condition of the child, and any  
20 recommendations regarding the child.

21 2. 'Limited guardianship.' The court may order that the duties and authority  
22 of a guardian appointed under sub. (3) (g) 2. be limited. The duties and authority of  
23 a limited guardian shall be as specified by the order of appointment under sub. (3) (g) 2.

24 (g) 2. The duties and authority of a full guardian shall apply to a limited guardian  
25 to the extent relevant to the duties or authority of the limited guardian, except as

1 limited by the order of appointment. The court may limit the authority of a guardian  
2 with respect to any power to allow the parent to retain such power to make decisions  
3 as is within the parent's ability to exercise effectively and may limit the physical  
4 custody of a guardian to allow shared physical custody with the parent if shared  
5 physical custody is in the best interests of the child. The court shall set an expiration  
6 date for a limited guardianship order, which may be extended for good cause shown.

7 3. 'Temporary guardianship.' If it is demonstrated to the court that a child's  
8 particular situation, including the inability of the child's parent to provide for the  
9 care, custody, and control of the child for a temporary period of time, requires the  
10 appointment of a temporary guardian, the court may appoint a temporary guardian  
11 as provided under sub. (4).<sup>(5)</sup>

12 4. 'Emergency guardianship.' If it is demonstrated to the court that the welfare  
13 of a child requires the immediate appointment of an emergency guardian, the court  
14 may appoint an emergency guardian as provided under sub. (5).<sup>(6)</sup>

15 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the  
16 parent as a result of the parent-child relationship that are not assigned to the  
17 guardian or otherwise limited by statute or court order. A guardian acting on behalf  
18 of a child may exercise only those powers that the guardian is authorized to exercise  
19 by statute or court order. The court may authorize a guardian to exercise only those  
20 powers that are necessary to provide for the care, custody, and control of the child and  
21 to exercise those powers in a manner that is appropriate to the child.

22 (3) PROCEDURES. (a) *Petition; who may file.* 1. Except as provided in subd. 2.,  
23 any person, including a child 12 years of age or over on his or her own behalf, may  
24 petition for the appointment of a guardian for a child.

INS  
From page 4  
Section 11

1           2. If there is an action pending under s. 48.13, 48.14 (1), (3), (5), or (12), 938.12,  
2           938.13, or 938.135, a petition under this subsection may be filed by any party to the  
3           pending action if the petition is consistent with the child's permanency plan and does  
4           not seek to change the requirements of any court order issued under s. 48.21 (5) or  
5           (6), 48.213 (4), 48.355, 48.357, 48.363, 48.365, 48.427 (3m), 48.43, 48.977, 938.21 (5)  
6           or (6), 938.355, 938.357, or 938.365.

7           (b) *Petition; form and content.* A petition for guardianship may include an  
8           application for protective placement or protective services or both under ch. 55. The  
9           petition shall be entitled "In the interest of .... (child's name), a person under the age  
10          of 18" and shall state all of the following, if known to the petitioner:

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

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

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

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

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

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

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

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

12          9. The information required under s. 822.29 (1).

13          10. Whether the child may be subject to s. 48.028 or the federal Indian Child  
14          Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to s. 48.028 or that  
15          act, the names and addresses of the child's Indian custodian, if any, and Indian tribe,  
16          if known.

17          11. If the petitioner knows or has reason to know that the child is an Indian  
18          child, reliable and credible information showing that continued custody of the child  
19          by the child's parent or Indian custodian is likely to result in serious emotional or  
20          physical damage to the child under s. 48.028 (4) (d) 1. and that active efforts under  
21          s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family  
22          and that those efforts have proved unsuccessful and, if the proposed guardianship  
23          would change the placement of the child from the home of his or her parent or Indian  
24          custodian to a placement outside that home, a statement as to whether the new  
25          placement is in compliance with the order of placement preference under s. 48.028



1 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance  
2 with that order, specific information showing good cause, as described in s. 48.028  
3 (7) (e), for departing from that order.

4 12. Whether the petitioner is aware of any guardianship or other related  
5 proceeding involving the child that is pending in another court and, if so, the details  
6 of the guardianship, termination of parental rights, or related proceeding.

7 13. Whether the child has been adjudged to be in need of protection or services  
8 under s. 48.13 or 938.13 or if a case is pending or if the child has been adjudged  
9 delinquent or if a case is pending under s. 938.12, or is subject to a court order under  
10 s. 48.21, 48.345, 48.357, 48.363, 48.365, 938.21, 938.34, 938.345, 938.357, 938.363,  
11 or 938.365.

12 (c) *Service of petition and notice.* 1. Except as provided in subd. 3, the  
13 petitioner shall cause the petition and notice of the time and place of the hearing  
14 under par. (e) to be served at least 7 days before the time of the hearing upon all  
15 interested persons, unless notice is specifically waived by an interested person or by  
16 the court for good cause shown. Failure of the petitioner to provide notice to all interested persons shall  
deprive the court of jurisdiction

17 2. A notice shall be in writing. A copy of the petition and any other required  
18 document shall be attached to the notice. Except as provided in subd. 3, notice shall  
19 be delivered in person or by certified mail. Notice is considered to be given by proof  
20 of personal delivery, by proof that the notice was sent by certified mail to the  
21 last-known address of the recipient, or, if the recipient is an adult, by the written  
22 admission of service of the person served.

23 3. If the petitioner knows or has reason to know that the child is an Indian child,  
24 notice to the Indian child's parent, Indian custodian, and Indian tribe shall be  
25 provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under

1 par. (e) <sup>or (f)</sup> until at least 10 days after receipt of the notice by the Indian child's parent,  
2 Indian custodian, and Indian tribe or, if the identity or location of the Indian child's  
3 parent, Indian custodian, or tribe cannot be determined, until at least 15 days after  
4 receipt of the notice by the U.S. secretary of the interior. On request of the Indian  
5 child's parent, Indian custodian, or Indian tribe, the court shall grant a continuance  
6 of up to 20 additional days to enable the requester to prepare for the hearing.

7 (d) *Statement by proposed guardian.* At least 96 hours before the hearing under  
8 par. (e), the proposed guardian shall submit to the court a sworn and notarized  
9 statement as to the number of persons for whom the proposed guardian is  
10 responsible, whether as a parent, guardian, or legal custodian, as to the proposed  
11 guardian's income, assets, debts, and living expenses, and as to whether the  
12 proposed guardian is currently charged with or has been convicted of a crime or has  
13 been determined under s. 48.981 (3) (c) to have abused or neglected a child. If the  
14 proposed guardian is currently charged with or has been convicted of a crime or has  
15 been determined under s. 48.981 (3) (c) to have abused or neglected a child, he or she  
16 shall include in the sworn and notarized statement a description of the  
17 circumstances surrounding the charge, conviction, or determination.

18 <sup>I</sup> Initial <sup>Yh</sup> (e) <sup>U</sup> Hearing. 1. The initial hearing on a petition for guardianship, other than  
19 a petition for emergency guardianship under sub. (5), shall be heard within 45 days  
20 after the filing of the petition. At the hearing the court shall first determine whether  
21 any party wishes to contest the petition. If the petition is not contested, the court  
22 shall immediately proceed to a fact-finding and dispositional hearing, unless an  
23 adjournment is requested. If the petition is contested and all parties consent, the  
24 court may proceed immediately to a fact-finding and dispositional hearing. If all  
25 parties do not consent or if an adjournment is requested, the court shall set a date

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① (F) Fact finding and dispositional hearing

1 for a fact-finding and dispositional hearing that allows reasonable time for the  
2 parties to prepare but is not more than 30 days after the initial hearing. The court  
3 shall hold the fact-finding and dispositional hearing at the time specified or set by  
4 the court under this subdivision, at which any party may present evidence, including  
5 expert testimony, and argument relating to the allegations in the petition. INS  
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6 2. If the petition is contested, any party may request, or the court may propose  
7 on its own motion, that an investigation be conducted to determine whether the child  
8 is a proper subject for guardianship and whether the proposed guardian would be a  
9 suitable guardian for the child. If the court determines that such an investigation  
10 is necessary and that the welfare of the child demands such an investigation, the  
11 court may order the county department or an agency under contract with the county,  
12 or, in a county having a population of 750,000 or more, the department or an agency  
13 under contract with the department to conduct such an investigation. The person  
14 conducting the investigation shall file a report of its investigation with the court at  
15 least 96 hours before the fact-finding and dispositional hearing. The parents of the  
16 child and the proposed guardian shall reimburse the person conducting the  
17 investigation for the cost of the investigation according to a fee schedule established  
18 by the department based on ability to pay.

19 23. The proposed guardian and any proposed successor guardian shall be  
20 physically present at the hearing unless the court excuses the attendance of either  
21 or, for good cause shown, permits attendance by telephone. The child is not required  
22 to attend the hearing, but if the child has nominated the proposed guardian, the child  
23 shall provide to his or her guardian ad litem sufficient information for the guardian  
24 ad litem to advise the court whether the nomination is in the best interests of the  
25 child.

1 3 A. If a man who has been given notice under par. (c) 1. appears at the <sup>initial</sup> hearing,  
 2 alleges that he is the father of the child, and states that he wishes to establish the  
 3 paternity of the child, s. 48.299 (6) applies. The court may order a temporary  
 4 guardianship under sub. (4) pending the outcome of the paternity proceedings.

5 ~~(d)~~ (f) *Dispositional factors*. In determining the appropriate disposition under this  
 6 section, the court shall consider all of the following:

7 1. Whether the grounds for full, limited, or temporary guardianship were  
 8 proven by clear and convincing evidence.

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

13 3. Whether the proposed guardian would be fit, willing, and able to serve as the  
 14 guardian of the child.

15 4. If the child is an Indian child, the order of placement preference under s.  
 16 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as  
 17 described in s. 48.028 (7) (e), for departing from that order.

18 5. Whether appointment of the proposed guardian as the child's guardian is in  
 19 the best interests of the child.

20 ~~(h)~~ (g) *Disposition*. At the conclusion of the hearing under par. (e), the court shall  
 21 grant one of the following dispositions, unless the court adjourns the hearing under  
 22 par. (h): (i)

23 1. A disposition dismissing the petition if the court finds that the petitioner has  
 24 not proved the allegations in the petition by clear and convincing evidence or  
 25 determines that appointment of the proposed guardian as the child's guardian is not

1 in the best interests of the child. Dismissal of a petition under this subdivision does  
2 not preclude the court from referring the child to the intake worker for an intake  
3 inquiry under s. 48.24 or from acting as an intake worker at the court's discretion  
4 under s. 48.10.

5 2. A disposition ordering that the proposed guardian be appointed as the child's  
6 full guardian under sub. (2) (c) 1., limited guardian under sub. (2) (c) 2., or temporary  
7 guardian under sub. (2) (c) 3., if the court finds that the petitioner has proved the  
8 allegations in the petition by clear and convincing evidence and determines that such  
9 an appointment is in the best interests of the child. The disposition may also  
10 designate an amount of support to be paid by the child's parents and, subject to sub.  
11 (12), may include reasonable rules of parental visitation, which rules the court shall  
12 determine in accordance with the factors specified in s. 767.41 (5), as applicable. If  
13 the court appoints the proposed guardian as the child's guardian, the court shall  
14 issue letters of guardianship to the guardian. A dispositional order under this  
15 section may not change the placement of a child under the supervision of a court  
16 pursuant to s. 48.13, 48.14 (1), (3), (5), or (12), 938.12, 938.13, or 938.135.

17 (i) (h) *Adjournment; proposed guardian unfit or not in best interests.* If at the  
18 conclusion of the hearing under par. (e) the court finds that the petitioner has proved  
19 the allegations in the petition, other than the allegation specified in par. (b) 8., by  
20 clear and convincing evidence, but that the proposed guardian is not fit, willing, and  
21 able to serve as the guardian of the child, or if the court finds that the petitioner has  
22 so proved all of the allegations in the petition, but that appointment of the proposed  
23 guardian as the child's guardian is not in the best interests of the child, the court may,  
24 in lieu of granting a disposition dismissing the petition under par. (g) 1., adjourn the  
25 hearing for not more than 30 days, request the petitioner or any other party to

1 nominate a new proposed guardian, and order the guardian ad litem to report to the  
2 court concerning the suitability of the new proposed guardian to serve as the  
3 guardian of the child.

4 ~~(5)~~ (4) TEMPORARY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court  
5 may appoint a temporary guardian for a child for a period not to exceed 180 days,  
6 except that the court may extend this period for good cause shown for one additional  
7 180-day period. The court's determination and order appointing the temporary  
8 guardian shall specify the authority of the temporary guardian, which shall be  
9 limited to those acts that are reasonably related to the reasons for the appointment  
10 that are specified in the petition for temporary guardianship. The authority of the  
11 temporary guardian is limited to the performance of those acts stated in the order  
12 of appointment.

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

16 (c) *Cessation of powers.* The duties and powers of the temporary guardian cease  
17 upon the expiration of the period specified in par. (a), or the termination as  
18 determined by the court of the situation of the child that was the cause of the  
19 temporary guardianship. Upon cessation of a temporary guardianship, the  
20 temporary guardian shall file with the court any report that the court requires.

21 ~~(6)~~ (5) EMERGENCY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court  
22 may appoint an emergency guardian for a child for a period not to exceed 60 days.  
23 The court's determination and order appointing the emergency guardian shall  
24 specify the authority of the emergency guardian and shall be limited to those acts  
25 that are reasonably related to the reasons for the appointment that are specified in

1 the petition for emergency guardianship. The authority of the emergency guardian  
2 is limited to the performance of those acts stated in the order of appointment.

3 (b) *Procedures for appointment.* All of the following procedures apply to the  
4 appointment of an emergency guardian:

5 1. Any person may petition for the appointment of an emergency guardian for  
6 a child. The petition shall contain the information required under sub. (3) (b) and  
7 shall specify the reasons for the appointment of an emergency guardian and the  
8 powers requested for the emergency guardian.

9 2. The petitioner shall give notice of the petition and of the time and place of  
10 the hearing under subd. 4. to the child, if 12 years of age or over, the child's guardian  
11 ad litem, and the child's counsel, if any; the child's parents, guardian, and legal  
12 custodian; and the person nominated as emergency guardian. The notice and a copy  
13 of the petition shall be served as soon after the filing of the petition as possible, shall  
14 be served by the most practical means possible, including personal service or service  
15 by electronic mail or telephone, and shall include notice of the right to request the  
16 appointment of counsel or to retain counsel of the party's own choosing and of the  
17 right to petition for reconsideration or modification of the emergency guardianship  
18 under subd. 5. If the petitioner serves notice of the hearing after the hearing is  
19 conducted and the court has entered an order, the petitioner shall include the court's  
20 order with the notice of the hearing.

21 3. The court shall appoint a guardian ad litem for the child as soon as possible  
22 after the filing of the petition. The court shall attempt to appoint the guardian ad  
23 litem before the hearing on the petition, but may appoint the guardian ad litem after  
24 the hearing if the court finds that exigent circumstances require the immediate  
25 appointment of an emergency guardian. The guardian ad litem shall attempt to meet

1 with or observe the child before the hearing or as soon as is practicable after the  
2 hearing, but not later than 3 calendar days after the hearing. The guardian ad litem  
3 shall report to the court on the advisability of the emergency guardianship at the  
4 hearing or, if not appointed until after the hearing, not later than 7 calendar days  
5 after the hearing.

6 4. The court shall hold a hearing on the emergency guardianship petition as  
7 soon as possible after the filing of the petition or, for good cause shown, may issue a  
8 temporary order appointing an emergency guardian without a hearing <sup>that</sup> which shall  
9 remain in effect until a hearing is held on the emergency guardianship petition. If  
10 appointed prior to the hearing, the guardian ad litem shall attend the hearing in  
11 person or by telephone.

12 5. If the court appoints an emergency guardian, any person specified in subd.  
13 2. may petition for reconsideration or modification of the emergency guardianship  
14 and the court shall hold a rehearing on the issue of appointment of the emergency  
15 guardian within 30 calendar days after the filing of the petition.

16 6. If the court determines that the welfare of the child does not require the  
17 immediate appointment of an emergency guardian, the court may dismiss the  
18 petition. Dismissal of a petition under this subdivision does not preclude the court  
19 from referring the child to the intake worker for an intake inquiry under s. 48.24 or  
20 from acting as an intake worker at the judge's discretion under s. 48.10.

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



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

6 (7) (6) STANDBY GUARDIANSHIP. A petition for the appointment of a standby  
7 guardian of the person for a child to assume the duty and authority of guardianship  
8 on the incapacity, death, or debilitation and consent of the child's parent shall be  
9 brought under s. 48.978.

10 (8) (7) SUCCESSOR GUARDIAN. (a) *Appointment; original petition or during*  
11 *guardianship.* 1. As part of a petition for the original appointment of a guardian of  
12 a child or at any time after that appointment, a person may petition for the  
13 appointment of one or more successor guardians of the child to assume the duty and  
14 authority of full, limited, or temporary guardianship in the event of an occurrence  
15 specified in subd. 2. Except as provided in par. (b), if the petition for the appointment  
16 of a successor guardian is brought after the original appointment of a guardian, the  
17 petition shall be heard in the same manner and subject to the same requirements as  
18 provided under this section for an original appointment of a guardian.

19 2. After hearing, the court may designate one or more successor guardians  
20 whose appointment shall become effective immediately upon the death,  
21 unwillingness or inability to act, resignation, or removal by the court of the initially  
22 appointed guardian or during a period, as determined by the initially appointed  
23 guardian, when the initially appointed guardian is temporarily unable to fulfill his  
24 or her duties, including during an extended vacation or illness. The powers and  
25 duties of the successor guardian shall be the same as those of the initially appointed

1 guardian. The successor guardian shall receive a copy of the court order establishing  
2 or modifying the initial guardianship and of the order designating the successor  
3 guardian. Upon the occurrence of an event specified in this subdivision, the  
4 successor guardian shall so notify the court and request the court to issue new letters  
5 of guardianship. Upon notification, the court shall issue new letters of guardianship  
6 that specify that the successor guardianship is permanent or that specify the period  
7 for a temporary successor guardianship.

8 (b) *Appointment; when no guardian.* 1. If a guardian dies, is removed by order  
9 of the court, or resigns and the resignation is accepted by the court, the court, on its  
10 own motion or upon petition of any interested person, may appoint a competent and  
11 suitable person as successor guardian. The court may, upon request of any interested  
12 person or on its own motion, direct that the petition or motion for the appointment  
13 of a successor guardian be heard in the same manner and subject to the same  
14 requirements as provided under this section for an original <sup>initial</sup> appointment of a  
15 guardian.

16 2. If the appointment under subd. 1. is made without hearing, the successor  
17 guardian shall provide notice to all interested persons of the appointment, the right  
18 to request the appointment of counsel or to retain counsel of the interested person's  
19 own choosing, and the right to petition for reconsideration of the appointment of the  
20 successor guardian. The notice shall be served personally or by mail not later than  
21 7 days after the appointment.

22 (1) — (8) MODIFICATION OF GUARDIANSHIP ORDER. (a) Any interested person or other  
23 person approved by the court may request a modification of a guardianship order  
24 entered under this subsection or sub. (3) (g) 2. or the court may, on its own motion,  
25 propose such a modification. The request or motion shall set forth in detail the

1 nature of the proposed modification, shall allege facts sufficient to show that there  
2 has been a substantial change in circumstances since the last order affecting the  
3 guardianship was entered and that the proposed modification would be in the best  
4 interests of the child, and shall allege any other information that affects the  
5 advisability of the court's disposition.

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

11 (c) If a hearing is to be held, the person requesting or proposing the modification  
12 shall notify all interested persons at least 7 days prior to the hearing of the date,  
13 place, and purpose of the hearing. A copy of the request or proposal shall be attached  
14 to the notice. The court may order a modification if, at the hearing, the court finds  
15 that the person proposing the modification has proved by clear and convincing  
16 evidence that there has been a substantial change in circumstances and determines  
17 that a modification would be in the best interests of the child.

18 (10) (9) REVIEW OF CONDUCT OF GUARDIAN. (a) *Continuing jurisdiction of court.* The  
19 court that appointed the guardian of a child has continuing jurisdiction over the  
20 guardian.

21 (b) *Cause for court action against a guardian.* The court may impose a remedy  
22 under par. (d) if a guardian of a child does any of the following:

- 23 1. Abuses or neglects the child or knowingly permits others to do so.  
24 2. Fails to disclose information specified in sub. (3) (d) that would have  
25 prevented appointment of the person as guardian.

1 3. Fails to follow or comply with the court's order.

2 4. Otherwise fails to perform any of his or her duties as a guardian under s.  
3 48.023.

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

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

16 1. Remove the guardian.

17 2. Remove the guardian and appoint a successor guardian.

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

21 4. Modify the duties and authority of the guardian.

22 5. Require the guardian to pay any costs of the proceeding, including costs of  
23 service and attorney fees, if the court finds that the guardian's conduct was  
24 egregious.

(11)

(10)

1 (10) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* A guardianship  
2 under this section shall continue until the child attains the age of 18 years unless any  
3 of the following occurs:

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

5 2. The child marries.

6 3. The child dies.

7 4. The child's residence changes from this state to another state and a guardian  
8 is appointed in the new state of residence.

9 5. The guardian dies, or resigns and the resignation is accepted by the court,  
10 and a successor guardian is not appointed.

11 6. The guardian is removed for cause under sub. (9) (d) 1. and a successor  
12 guardian is not appointed.

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

15 8. The court terminates the guardianship upon the adoption of the child.

16 (b) *Termination on request of parent or child.* 1. A parent of the child or the  
17 child may file a petition requesting that a guardianship order entered under sub. (3)

18 (3) 2., (4), (5), or (7) be terminated. The petition shall allege facts sufficient to show  
19 that there has been a substantial change in circumstances since the last order

20 affecting the guardianship was entered, that the parent is fit, willing, and able to  
21 carry out the duties of a guardian, and that termination of the guardianship would

22 be in the best interests of the child. *or that the compelling facts and circumstances on  
which the guardianship was granted no longer exist*

23 2. The court shall hold a hearing on the petition unless written waivers of  
24 objections to termination of the guardianship are signed by all interested persons  
25 and the court approves the waivers.

1           3. If a hearing is to be held, by no less than 7 days before the date of the hearing,  
 2 the parent or child requesting the termination shall provide notice of the hearing to  
 3 the child, the child's parents, the guardian, and any other persons required by the  
 4 court. A copy of the request or proposal <sup>Petition</sup> shall be attached to the notice. The court  
 5 shall terminate the guardianship if the court finds, <sup>by</sup> by clear and convincing evidence,  
 6 that the parent has remedied the unfitness, unwillingness, or inability to provide for  
 7 the care, custody, and control of the child or other compelling facts and circumstances  
 8 on which the guardianship was granted and that he or she is now fit, willing, and able  
 9 to carry out the duties of a guardian and the court determines that termination of  
 10 the guardianship would be in the best interests of the child.

11           **SECTION 23.** 48.977 (4) (cm) 1m. of the statutes is created to read:

12           48.977 (4) (cm) 1m. If a man who has been given notice under par. (c) 1. appears  
 13 at the hearing, alleges that he is the father of the child, and states that he wishes to  
 14 establish the paternity of the child, s. 48.299 (6) applies.

15           **SECTION 24.** 48.977 (8) of the statutes is amended to read:

16           48.977 (8) RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS OTHER GUARDIANSHIP  
 17 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian  
 18 appointed under s. 48.976 <sup>795</sup> or ch. 54, 2017 stats., or ch. 880, 2003 stats.

19           (b) Nothing in this section prohibits an individual from petitioning a court  
 20 under ch. 54 s. 48.976 <sup>795</sup> for appointment of a guardian.

21           **SECTION 25.** 48.978 (2) (d) 1m. of the statutes is created to read:

22           48.978 (2) (d) 1m. If a man who has been given notice under par. (c) 1. appears  
 23 at the hearing, alleges that he is the father of the child, and states that he wishes to  
 24 establish the paternity of the child, s. 48.299 (6) applies.

25           **SECTION 26.** 48.978 (7) of the statutes is amended to read:

Above  
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1 48.978 (7) RELATIONSHIP TO CH. 54 OTHER GUARDIANSHIP PROCEDURES. (a) Except  
2 when a different right, remedy, or procedure is provided under this section, the  
3 rights, remedies, and procedures provided in s. 48.976 or ch. 54, whichever is  
4 applicable, shall govern a standby guardianship created under this section.

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

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

10 **SECTION 27.** 48.981 (7) (a) 11v. of the statutes is created to read:

11 48.981 (7) (a) 11v. A guardian ad litem for a child who is the subject of a  
12 guardianship proceeding under s. 48.976 to the extent necessary for the guardian ad  
13 litem to make recommendations to the court concerning the best interests of the  
14 child, to report to the court concerning the suitability of the proposed guardian to  
15 serve as guardian of the child and on any other matter that the court requests, and  
16 otherwise to fulfill the duties and responsibilities required of the guardian ad litem  
17 in the proceeding.

18 **SECTION 28.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

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

25 **SECTION 29.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

1           51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed  
2 under s. ~~48.976~~ or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
3 developmental disability who has a parent or has a guardian appointed under s.  
4 48.831 and does not have a guardian appointed under s. ~~48.976~~ or 54.10 or s. 880.33,  
5 2003 stats., information concerning the patient that is obtainable by staff members  
6 of the agency or nonprofit corporation with which the agency has contracted is  
7 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,  
8 if any; the name, birth date and county of residence of the patient; information  
9 regarding whether the patient was voluntarily admitted, involuntarily committed  
10 or protectively placed and the date and place of admission, placement or  
11 commitment; and the name, address and telephone number of the guardian of the  
12 patient and the date and place of the guardian's appointment or, if the patient is a  
13 minor with developmental disability who has a parent or has a guardian appointed  
14 under s. 48.831 and does not have a guardian appointed under s. ~~48.976~~ or 54.10 or  
15 s. 880.33, 2003 stats., the name, address and telephone number of the parent or  
16 guardian appointed under s. 48.831 of the patient.

17           **SECTION 30.** 54.01 (10) of the statutes is amended to read:

18           54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to  
19 manage the income and assets, ~~which may include, by court order, digital property,~~  
20 ~~as defined in s. 711.03 (10),~~ and provide for the essential requirements for health and  
21 safety and the personal needs of a ~~minor, an individual found incompetent, or a~~  
22 spendthrift or to manage the income and assets of a minor. A person's assets may  
23 include, by court order, digital property, as defined in s. 711.03 (10).

24           **SECTION 31.** 54.10 (1) of the statutes is amended to read:



1           54.10 (1) A court may appoint ~~a guardian of the person or~~ a guardian of the  
2           estate, ~~or both~~, for an individual if the court determines that the individual is a  
3           minor. Except as provided in ss. 48.831, 48.977, and 48.978, an appointment of a  
4           guardian of the person of a minor shall be conducted under the procedures specified  
5           in s. 48.976. (795)

6           **SECTION 32.** 54.52 (1) of the statutes is amended to read:

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

15           **SECTION 33.** 54.56 of the statutes is renumbered 48.976 (11) and amended to  
16           read:

17           48.976 (11) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS. (a)

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

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

INS  
23-10

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

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

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

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

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

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

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

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

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

11 **SECTION 34.** 54.57 of the statutes is renumbered 48.976 (12) and amended to  
12 read:

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

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

25 **SECTION 35.** 55.03 (1) of the statutes is amended to read:

1           55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting  
2 as a guardian appointed under s. 48.976<sup>195</sup> or ch. 54, 2017 stats., or ch. 880, 2003 stats.,  
3 or ch. 54 may be a provider of protective services or protective placement for its ward  
4 under this chapter.

5           **SECTION 36.** 115.76 (12) (b) 2. of the statutes is amended to read:

6           115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was  
7 made a ward of the state, county, or child welfare agency under ch. 54, 2017 stats.,  
8 or ch. 880, 2003 stats., or if a child has been placed in the legal custody or  
9 guardianship of the state, county, or child welfare agency under ch. 48 or ch. 767.

10          **SECTION 37.** 118.125 (2) (L) of the statutes is amended to read:

11          118.125 (2) (L) A school board shall disclose the pupil records of a pupil in  
12 compliance with a court order under s. 48.235<sup>9195</sup> (3) (c) 5, 48.236 (4) (a), 48.345 (12) (b),  
13 938.34 (7d) (b), 938.396 (1) (d), or 938.78 (2) (b) 2. after making a reasonable effort  
14 to notify the pupil's parent or legal guardian.

15          **SECTION 38.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

16          146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62  
17 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the  
18 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a  
19 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
20 or for whom a guardian is appointed under s. 48.976<sup>795</sup> or 54.10 or s. 880.33, 2003 stats.

21          **SECTION 39.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

22          146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed  
23 under s. 48.976<sup>195</sup> or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
24 developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a  
25 guardian appointed under s. 48.831 and does not have a guardian appointed under

1 s. ~~48.976~~<sup>795</sup> or 54.10 or s. 880.33, 2003 stats., information concerning the patient that  
 2 is obtainable by staff members of the agency or nonprofit corporation with which the  
 3 agency has contracted is limited, except as provided in subd. 9. e., to the nature of  
 4 an alleged rights violation, if any; the name, birth date and county of residence of the  
 5 patient; information regarding whether the patient was voluntarily admitted,  
 6 involuntarily committed or protectively placed and the date and place of admission,  
 7 placement or commitment; and the name, address and telephone number of the  
 8 guardian of the patient and the date and place of the guardian's appointment or, if  
 9 the patient is a minor with developmental disability who has a parent or has a  
 10 guardian appointed under s. 48.831 and does not have a guardian appointed under  
 11 s. ~~48.976~~<sup>795</sup> or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number  
 12 of the parent or guardian appointed under s. 48.831 of the patient.

13 **SECTION 40.** 757.69 (1) (g) 5. of the statutes is amended to read:

14 757.69 (1) (g) 5. Conduct uncontested proceedings under s. 48.13, 48.133,  
 15 ~~48.976~~<sup>795</sup> 938.12, 938.13, or 938.18.

16 **SECTION 41.** 808.075 (4) (a) 9m. of the statutes is created to read:

17 808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.976 (9). <sup>795(10)</sup>

18 **SECTION 42.** 808.075 (4) (a) 11. of the statutes is amended to read:

19 808.075 (4) (a) 11. Termination of guardianship under s. ~~48.976~~<sup>795</sup> (10) or 48.977  
 20 (7), including removal of a guardian. <sup>795(11)</sup>

21 **SECTION 43.** 808.075 (4) (a) 13. of the statutes is created to read:

22 808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.976 (7). <sup>795(12)</sup>

23 **SECTION 44.** 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14.

24 and amended to read:

25 808.075 (4) (a) 14. Order for visitation under s. 54.56 ~~48.976~~<sup>795</sup> (11). <sup>795(12)</sup>

**SECTION 45**

814.66 (13m)

renumbered 814.66 (13m) and

(12)

(11)

**SECTION 45.** 814.66 (1) (m) of the statutes is amended to read:

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

\*\*\* NOTE: This fee currently goes to the probate court. Please confirm that changing this to a circuit court fee is consistent with your intent.

**SECTION 46.** 938.345 (1) (e) of the statutes is amended to read:

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

**SECTION 47. Nonstatutory provisions.**

(1) **TRANSITION.** Notwithstanding the treatment of ss. 54.01 (10) and 54.10 (1), all guardianships of the person of a minor under s. 54.10, 2017 stats., or ch. 880, 2003 stats., in effect immediately before the effective date of this subsection remain in effect and shall be considered guardianships under s. ~~48.976~~ **48.975** until terminated under s. ~~48.976~~ **48.975**(10), all matters commenced under ch. 54, 2017 stats., with respect to a guardianship of the person of a minor that are pending on the effective date of this subsection shall be completed under ch. 54, 2017 stats., and all orders appointing a guardian of the person of a minor under ch. 54, 2017 stats., entered beginning on the effective date of this subsection shall be considered guardianships under s. ~~48.976~~ **48.975**.

(2) **MERGER AUTHORITY.** 2017 Wisconsin Act 185 and this act affect the same statutory units without taking cognizance of each other. If the chief of the legislative reference bureau finds there is no mutual inconsistency in the changes made by each act, the chief shall incorporate the changes made by each act into the text of the statutory units.

**SECTION 48. Initial applicability.**



SA-  
Xref-  
Pwf

2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0241/P1ins  
EAW:amn&cjs

INS 4-12

Venue for guardianship under s. 48.980 shall be in the county of residence of the proposed ward or <sup>le in</sup> of the county in which the proposed ward is physically present, or, if the proposed ward is a nonresident, the county in which the <sup>le</sup> petitioner proposes that the proposed ward resides.

\*\*\*\*NOTE: As requested, this new language is modeled on s. 54.30 (2). Section 54.30 (2) also includes the following language: "A petition for receipt and acceptance of a foreign guardianship shall be directed to the circuit court of the county in which the foreign ward resides or intends to reside." Do you want to include a similar provision here?

INS 4-21

48.976 (3) GUARDIAN AD LITEM. The court shall appoint a guardian ad litem when a petition for appointment of a guardian or a modification or termination of a guardianship under this section. Except as provided under sub. (6) (b) 3., the court shall appoint the guardian ad litem as soon as possible and before the initial hearing.

INS 4-24

(a) Conduct an investigation appropriate to the case, including all of the following:

INS 9-25

SECTION 1. Subchapter XX (title) of chapter 48 of the statutes [precedes 48.978] (48.978) is created to read: [OTHER GUARDIANSHIPS AND DELEGATION OF POWER BY PARENT]

INS 11-13

(c) "Suitability" means whether the proposed guardian is fit and qualified to care for the child, exercises sound judgment, does not abuse alcohol or drugs, and displays the capacity to successfully nurture the child.



INS 19-5

The court shall determine whether the petitioner has proven the allegations in the petition under sub. (4) <sup>par.</sup> (b) by clear and convincing evidence and shall immediately proceed to determine the appropriate disposition under par. (h), considering the factors under par. (g).

INS 30-5

that the petitioner has proven the allegations in the petition under sub. 1.

INS 31-10

**SECTION 2.** Subchapter XX of chapter 48 of the statutes [precedes § 48.98] is renumbered Subchapter XXI. <sup>of chapter 48 [precedes 48.98]</sup>

INS 33-6

**SECTION 3.** 54.15 (6) of the statutes is amended to read:

✕54.15 (6) TESTAMENTARY NOMINATION BY PROPOSED WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate for any of his or her minor children who is in need of guardianship, unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interests. For an individual who is aged 18 or older and is found to be in need of guardianship by reason of a developmental disability or serious and persistent mental illness, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through a will.

History: 2005 a. 387 ss. 100, 346, 348, 349, 351, 354, 356, 469, 470, 506; 2007 a. 45; 2013 a. 20; 2015 a. 55.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

**SECTION 4.** 54.25 (2) (d) 1. of the statutes is amended to read:

✕54.25 (2) (d) 1. A court may authorize a guardian of the person to exercise all or part of any of the powers specified in subd. 2. only if it finds, by clear and

convincing evidence, that the individual lacks evaluative capacity to exercise the power. The court shall authorize the guardian of the person to exercise only those powers that are necessary to provide for the individual's personal needs, safety, and rights and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention. ~~The court may limit the authority of the guardian of the person with respect to any power to allow the individual to retain power to make decisions about which the individual is able effectively to receive and evaluate information and communicate decisions. When a court appoints a guardian for a minor, the guardian shall be granted care, custody, and control of the person of the minor.~~

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History: 2005 a. 264 s. 221; 2005 a. 387 ss. 100, 476, 511, 513, 514; 2005 a. 451 s. 177; 2007 a. 45, 96; 2015 a. 55, 179.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

**SECTION 5.** 54.25 (2) (d) 2. o. of the statutes is amended to read:

✕ 54.25 (2) (d) 2. o. The power to have custody of the ward, if an adult, and the power to have care, custody, and control of the ward, if a minor.

History: 2005 a. 264 s. 221; 2005 a. 387 ss. 100, 476, 511, 513, 514; 2005 a. 451 s. 177; 2007 a. 45, 96; 2015 a. 55, 179.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.



-0241

10/03/18

- meeting w/ Amber + Steve

Due 10/10/18

- Cut Sects. 1-4 •

- 13-5: add lang. from sections 3-4 ✓

✓ 48.02<sup>3</sup> as well as -

- <sup>authority to determine reasonable</sup> visitation with the child - Subject to an order of a Ct. of
- Change residence of child from this state to another state, notwithstanding 747.481

- more lines 6-10 on p. 13 to .... somewhere else? Maybe under (4)(h)2., maybe intro to duties + resp - done

P. 2 lines 14-17 - move to p. 22, line 10 subject to the order of the court under this subdivision or sub. (g), [ins language from p. 2] ✓

Section 9 - venue -

✓ Everywhere in bill - change "proposed ward" to "child"

Take language from 4-13-17, move to p. 11, make "venue," new par. (a), renumber all pars. ✓

- add "the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county in which a dispositional order has been issued under this chapter. ✓



Nonstat (D) - do we need to add other changes to 54 to the nonstat?

✓ filing fee placement - agreed that is best place

48.255 - does this need to be changed -  
except guardianships - add 48.9795