



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0241/P2  
EAW:amn&cjs

OP3

10/08 if possible

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Insert

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Regen!

1 AN ACT *to renumber* subchapter XX of chapter 48 [precedes 48.98]; *to*  
2 *renumber and amend* 54.56, 54.57, 808.075 (4) (f) 3. and 814.66 (1) (m); *to*  
3 *amend* 48.02 (8), 48.023 (intro.), 48.023 (3), 48.023 (4), 48.09 (5), 48.14 (2) (b),  
4 48.14 (11), 48.15, 48.185 (2), 48.235 (1) (c), 48.299 (4) (a), 48.299 (4) (b), 48.299  
5 (6) (intro.), 48.299 (6) (d), 48.299 (7), 48.345 (3) (a), 48.368 (1), 48.62 (2), 48.831  
6 (1), 48.831 (1m) (e), 48.977 (8), 48.978 (7), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18.  
7 c., 54.01 (10), 54.10 (1), 54.15 (6), 54.25 (2) (d) 1., 54.25 (2) (d) 2. o., 54.52 (1),  
8 55.03 (1), 115.76 (12) (b) 2., 118.125 (2) (L), 146.82 (2) (a) 9. a., 146.82 (2) (a) 9.  
9 c., 757.69 (1) (g) 5., 808.075 (4) (a) 11. and 938.345 (1) (e); and *to create*  
10 subchapter XX (title) of chapter 48 [precedes 48.978], 48.9795, 48.981 (7) (a)  
11 11v., 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the statutes; **relating to:**  
12 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. 48.977 (5) (b) or, 48.978 (6) (b) 2., or 48.9795 (2) <sup>(c)</sup> 2., a person appointed  
7 by the court to be the guardian of the person for a child under this chapter has the  
8 duty and authority to make important decisions in matters having a permanent  
9 effect on the life and development of the child and the duty to be concerned about the  
10 child's 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 or 48.977 or, if applicable, s. 48.9795. If the county board transfers this authority to  
8 or from the district attorney on or after May 11, 1990, the board may do so only if the  
9 action is effective on September 1 of an odd-numbered year and the board notifies  
10 the department of administration of that change by January 1 of that odd-numbered  
11 year.

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

13 48.14 (2) (b) The appointment and removal of a guardian of the person for a  
14 child under ss. 48.427, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and 48.978, and  
15 ch. 54 ~~48.9795~~ and for a child found to be in need of protection or services under s.  
16 48.13 because the child is without parent or guardian.

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

18 48.14 (11) Granting visitation privileges under s. 54.56 ~~48.9795 (12)~~.

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

20 **48.15 Jurisdiction of other courts to determine legal custody.** Except  
21 as provided in s. ss. 48.028 (3) and 48.9795 (2) (a) ~~2~~,<sup>(b)</sup> nothing in this chapter deprives  
22 another court of the right to determine the legal custody of a child by habeas corpus  
23 or to determine the legal custody or guardianship of a child if the legal custody or  
24 guardianship is incidental to the determination of an action pending in that court.  
25 Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise

1 jurisdiction under this chapter and ch. 938 is paramount in all cases involving  
 2 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn  
 3 children and their expectant mothers alleged to come within the provisions of ss.  
 4 48.133 and 48.14 (5).

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

6 48.185 (2) GUARDIANSHIP AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. In  
 7 an action under s. 48.41, venue shall be in the county where the birth parent or child  
 8 resides at the time that the petition is filed. Subject to sub. (5), venue for any  
 9 proceeding under s. 48.977 or any proceeding under subch. VIII when the child has  
 10 been placed outside the home pursuant to a dispositional order under s. 48.345 or  
 11 48.347, shall be in the county where the dispositional order was issued, unless the  
 12 child's county of residence has changed or the parent of the child has resided in a  
 13 different county of this state for 6 months. In either case, the Venue for guardianship  
 14 under s. 48.9795 shall be in the <sup>child's</sup> county of residence of the proposed ward or in the  
 15 county in which the <sup>child</sup> proposed ward is physically present, or, if the proposed ward is  
 16 a nonresident, the county in which the petitioner proposes that the <sup>child</sup> proposed ward  
 17 resides. The court may, upon a motion and for good cause shown, transfer the case,  
 18 along with all appropriate records, to the county of residence of the child or parent.

19 **\*\*\*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?

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

21 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is  
 22 the subject of a proceeding to terminate parental rights, whether voluntary or  
 23 involuntary, for a child who is the subject of a contested adoption proceeding, and for  
 a child who is the subject of a proceeding under s. 48.977 or, 48.978, or 48.9795.

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

48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at the fact-finding hearings under ss. 48.31, 48.42, 48.977 (4) (d) and, 48.978 (2) (e) and (3) (f) 2., and 48.9795.

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

48.299 (4) (b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing for a child held in custody under s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, trial reunifications, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders entered under s. 48.977 (4) (h) 2. or (6) or, 48.978 (2) (j) 2. or (3) (g), 48.9795. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

**SECTION 13.** 48.299 (6) (intro.) of the statutes is amended to read:

48.299 (6) (intro.) If a man who has been given notice under s. 48.27 (3) (b) 1., 48.977 (4) (c) 1., 48.978 (2) (c) 1., or 48.9795 (4) (c) 1. appears at any hearing for which he received the notice, alleges that he is the father of the child, and states that he wishes to establish the paternity of the child, all of the following apply:

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

2           48.299 (6) (d) The court may stay the proceedings under this chapter pending  
3 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court  
4 determines that the paternity proceedings will not unduly delay the proceedings  
5 under this chapter and the determination of paternity is necessary to the court's  
6 disposition of the child ~~if the child is found to be in need of protection or services~~  
7 proceedings or if the court determines or has reason to know that the paternity  
8 proceedings may result in a finding that the child is an Indian child and in a petition  
9 by the child's parent, Indian custodian, or tribe for transfer of the ~~proceeding~~  
10 proceedings to the jurisdiction of the tribe.

11           **SECTION 15.** 48.299 (7) of the statutes is amended to read:

12           48.299 (7) If a man who has been given notice under s. 48.27 (3) (b) 1., 48.977  
13 (4) (c) 1., 48.978 (2) (c) 1., or 48.9795 (4) (c) 1. appears at any hearing for which he  
14 received the notice but does not allege that he is the father of the child and state that  
15 he wishes to establish the paternity of the child or if no man to whom such notice was  
16 given appears at a hearing, the court may refer the matter to the state or to the  
17 attorney responsible for support enforcement under s. 59.53 (6) (a) for a  
18 determination, under s. 767.80, of whether an action should be brought for the  
19 purpose of determining the paternity of the child.

20           **SECTION 16.** 48.345 (3) (a) of the statutes is amended to read:

21           48.345 (3) (a) The home of a parent ~~or, other relative, or guardian~~ of the child,  
22 except that the judge may not designate the home of a parent ~~or, other relative, or~~  
23 guardian of the child as the child's placement if the parent ~~or, other relative, or~~  
24 guardian has been convicted under s. 940.01 of the first-degree intentional homicide,  
25 or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child,

1 and the conviction has not been reversed, set aside or vacated, unless the judge  
2 determines by clear and convincing evidence that the placement would be in the best  
3 interests of the child. The judge shall consider the wishes of the child in making that  
4 determination.

5 **SECTION 17.** 48.368 (1) of the statutes is amended to read:

6 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41  
7 or 48.415 or an appeal from a judgment terminating or denying termination of  
8 parental rights is filed during the year in which a dispositional order under s. 48.355,  
9 an extension order under s. 48.365, a voluntary agreement for placement of the child  
10 under s. 48.63, or a guardianship order under ch. 54, 2017 stats., or ch. 880, 2003  
11 stats., or s. 48.977 or ~~ch. 54~~ 48.9795 is in effect, the dispositional or extension order,  
12 voluntary agreement, or guardianship order shall remain in effect until all  
13 proceedings related to the filing of the petition or an appeal are concluded.

14 **SECTION 18.** 48.62 (2) of the statutes is amended to read:

15 48.62 (2) A relative, a guardian of a child, or a person delegated care and  
16 custody of a child under s. 48.979 who provides care and maintenance for the child  
17 is not required to obtain the license specified in this section. The department, county  
18 department, or licensed child welfare agency as provided in s. 48.75 may issue a  
19 license to operate a foster home to a relative who has no duty of support under s. 49.90  
20 (1) (a) and who requests a license to operate a foster home for a specific child who is  
21 either placed by court order or who is the subject of a voluntary placement agreement  
22 under s. 48.63. The department, a county department, or a licensed child welfare  
23 agency may, at the request of a guardian appointed under s. 48.977 ~~or~~, 48.978, or  
24 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003 stats., license the guardian's home as  
25 a foster home for the guardian's minor ward who is living in the home and who is

1 placed in the home by court order. Relatives with no duty of support and guardians  
2 appointed under s. 48.977 ~~or~~, 48.978, or 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003  
3 stats., who are licensed to operate foster homes are subject to the department's  
4 licensing rules.

5 **SECTION 19.** 48.831 (1) of the statutes is amended to read:

6 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment  
7 of a guardian of a child who does not have a living parent if a finding as to the  
8 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~  
9 s. 48.9795 applies to the appointment of a guardian for a child who does not have a  
10 living parent for all other purposes. An appointment of a guardian of the estate of  
11 a child who does not have a living parent shall be conducted in accordance with the  
12 procedures specified in ch. 54.

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

14 48.831 (1m) (e) A guardian appointed under s. 48.9795 or ch. 54, 2017 stats.,  
15 or ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court  
16 under s. 48.9795 (11) or s. 54.54 (1), 2017 stats., or s. 880.17 (1), 2003 stats.

17 **SECTION 21.** 48.977 (8) of the statutes is amended to read:

18 48.977 (8) ~~RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS~~ OTHER GUARDIANSHIP  
19 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian  
20 appointed under s. 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003 stats.

21 (b) Nothing in this section prohibits an individual from petitioning a court  
22 under ~~ch. 54~~ s. 48.9795 for appointment of a guardian.

23 **SECTION 22.** Subchapter XX (title) of chapter 48 [precedes 48.978] of the  
24 statutes is created to read:



## 1 OTHER GUARDIANSHIPS AND DELEGATION

## 2 OF POWER BY PARENT

3 **SECTION 23.** 48.978 (7) of the statutes is amended to read:4 48.978 (7) RELATIONSHIP TO ~~CH. 54~~ OTHER GUARDIANSHIP PROCEDURES. (a) Except  
5 when a different right, remedy, or procedure is provided under this section, the  
6 rights, remedies, and procedures provided in s. 48.9795 or ch. 54, whichever is  
7 applicable, shall govern a standby guardianship created under this section.8 (b) This section does not abridge the duties or authority of a guardian appointed  
9 under s. 48.9795, ch. 880, 2003 stats., or ch. 54.10 (c) Nothing in this section prohibits an individual from petitioning a court for  
11 the appointment of a guardian of the person under s. 48.9795 or a guardian of the  
12 estate under ch. 54.13 **SECTION 24.** 48.9795 of the statutes is created to read:14 **48.9795 Appointment of guardian of the person for a child. (1)**

15 DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

8 g. If the child is an Indian child, the Indian child's Indian custodian and Indian  
9 tribe.

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

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

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

15 b. The child's parent and guardian.

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

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

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

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

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

4 (2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY. (a) *Appointment*. 1. This  
5 section may be used for the appointment of a guardian of the person for a child. An  
6 appointment of a guardian of the estate of a child shall be conducted under the  
7 procedures specified in ch. 54. If the court assigned to exercise jurisdiction under this  
8 chapter has jurisdiction over a proceeding for the appointment of a guardian of the  
9 person for a child or continuing jurisdiction over such a guardianship and the court  
10 assigned to exercise probate jurisdiction has jurisdiction over a proceeding for the  
11 appointment of a guardian of the estate of the child or continuing jurisdiction over  
12 such a guardianship, the court assigned to exercise jurisdiction under this chapter  
13 may order those proceedings or guardianships to be consolidated under the  
14 jurisdiction of the court assigned to exercise jurisdiction under this chapter. Upon  
15 such consolidation, the court assigned to exercise jurisdiction under this chapter  
16 shall order all records relating to the guardianship of the estate of the child to be  
17 transferred to the court assigned to exercise jurisdiction under this chapter and that  
18 court shall retain those records as required under SCR chapter 72. This section does  
19 not prohibit a person from petitioning a court under s. 48.831, 48.977, or 48.978 for  
20 the appointment of a guardian of the person for a child.

21 2. If the proposed ward <sup>child</sup> is the subject of an action pending under s. 48.13 or  
22 48.14 or ch. 938, any subsequent petition filed under this section shall be heard by  
23 the court authorized to exercise jurisdiction over the pending action. The court shall  
24 stay a guardianship proceeding for the appointment of a full, limited, or temporary  
25 guardian of the person for a child under par. (c) 1., 2., or 3. until the action pending

1 under s. 48.13 or 48.14 or ch. 938 is resolved. The court may appoint an emergency  
2 guardian under sub. (6) while an action is pending under s. 48.13 or 48.14 or ch. 938  
3 if the court finds that the best interests of the child require the immediate  
4 appointment of a guardian.

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

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

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

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

23 3. In determining who is appointed as guardian, the court shall consider the  
24 nominations of the parents and child and the opinions of the parents and child as to  
25 what is in the best interests of the child, but the best interests of the child as

1 determined by the court shall control in making the determination when those  
2 nominations and opinions are in conflict with those best interests.

3 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.  
4 5., a guardian appointed under sub. (4) (h) 2. shall have all of the duties and authority  
5 specified in s. 48.023, unless those duties and that authority are limited under subd.  
6 2. A guardian appointed under sub. (4) (h) 2. shall also immediately notify the court  
7 that appointed the guardian of any change in the address of the guardian or child and  
8 shall make an annual report to that court on the condition of the child. The report  
9 shall include the location of the child, the health condition of the child, and any  
10 recommendations regarding the child.

11 2. 'Limited guardianship.' The court may order that the duties and authority  
12 of a guardian appointed under sub. (4) (h) 2. be limited. The duties and authority of  
13 a limited guardian shall be as specified by the order of appointment under sub. (4)  
14 (h) 2. The duties and authority of a full guardian shall apply to a limited guardian  
15 to the extent relevant to the duties or authority of the limited guardian, except as  
16 limited by the order of appointment. The court may limit the authority of a guardian  
17 with respect to any power to allow the parent to retain such power to make decisions  
18 as is within the parent's ability to exercise effectively and may limit the physical  
19 custody of a guardian to allow shared physical custody with the parent if shared  
20 physical custody is in the best interests of the child. The court shall set an expiration  
21 date for a limited guardianship order, which may be extended for good cause shown.

22 3. 'Temporary guardianship.' If it is demonstrated to the court that a child's  
23 particular situation, including the inability of the child's parent to provide for the  
24 care, custody, and control of the child for a temporary period of time, requires the

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1 appointment of a temporary guardian, the court may appoint a temporary guardian  
2 as provided under sub. (5).

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

6 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the  
7 parent as a result of the parent-child relationship that are not assigned to the  
8 guardian or otherwise limited by statute or court order. A guardian acting on behalf  
9 of a child may exercise only those powers that the guardian is authorized to exercise  
10 by statute or court order. The court may authorize a guardian to exercise only those  
11 powers that are necessary to provide for the care, custody, and control of the child and  
12 to exercise those powers in a manner that is appropriate to the child.

13 (3) GUARDIAN AD LITEM. The court shall appoint a guardian ad litem when a  
14 petition is filed for appointment of a guardian or a modification or termination of a  
15 guardianship under this section. Except as provided under sub. (6) (b) 3., the court  
16 shall appoint the guardian ad litem as soon as possible and before the initial hearing.  
17 In addition to any other duties and responsibilities required of a guardian ad litem  
18 including those under s. 48.235 (3), a guardian ad litem appointed for a child who is  
19 the subject of a proceeding under this section shall do all of the following unless  
20 granted leave by the court not to do so:

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

23 1. Personally, or through a trained designee, meet with or observe the child,  
24 assess the appropriateness and safety of the environment of the child, and, if

1 appropriate to the age and developmental level of the child, interview the child and  
2 determine the child's goals and concerns regarding the proposed guardianship.

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

6 (b) Attend all court proceedings relating to the guardianship, present evidence  
7 concerning the best interests of the child, if necessary, and make clear and specific  
8 recommendations to the court at every stage of the proceedings.

9 (c) Report to the court on any matter related to his or her duties that the court  
10 requests.

11 (d) To the extent necessary to fulfill the duties and responsibilities required of  
12 the guardian ad litem in the proceedings, inspect reports and records relating to the  
13 child, and, upon presentation of necessary releases the child's family, and the proposed guardian, including law enforcement  
14 reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss.  
15 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a)  
16 and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11v.,  
17 pupil records under s. 118.125 (2) (L), mental health records under s. 51.30 (4) (b) 4.,  
18 and health care records under s. 146.82 (2) (a) 4. The court shall include in the order  
19 appointing the guardian ad litem an order requiring the custodian of any report or  
20 record specified in this subdivision to permit the guardian ad litem to inspect and  
21 copy the report or record on presentation by the guardian ad litem of a copy of the  
22 order. A guardian ad litem who obtains access to a report or record described in this  
23 subdivision shall keep the information contained in the report or record confidential  
24 and may use or further disclose that information only for purpose of the proceedings.

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

4           2. If there is an action pending under s. 48.13, 48.14 (1), (3), (5), or (12), 938.12,  
5 938.13, or 938.135, a petition under this subsection may be filed by any party to the  
6 pending action if the petition is consistent with the child's permanency plan and does  
7 not seek to change the requirements of any court order issued under s. 48.21 (5) or  
8 (6), 48.213 (4), 48.355, 48.357, 48.363, 48.365, 48.427 (3m), 48.43, 48.977, 938.21 (5)  
9 or (6), 938.355, 938.357, 938.363, or 938.365.

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

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

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

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

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

24           5. If the petitioner is requesting a limited guardianship, the facts and  
25 circumstances establishing that the child's parents need assistance in providing for



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

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

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

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

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

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

20 11. If the petitioner knows or has reason to know that the child is an Indian  
21 child, reliable and credible information showing that continued custody of the child  
22 by the child's parent or Indian custodian is likely to result in serious emotional or  
23 physical damage to the child under s. 48.028 (4) (d) 1. and that active efforts under  
24 s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family  
25 and that those efforts have proved unsuccessful and, if the proposed guardianship

1 would change the placement of the child from the home of his or her parent or Indian  
2 custodian to a placement outside that home, a statement as to whether the new  
3 placement is in compliance with the order of placement preference under s. 48.028  
4 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance  
5 with that order, specific information showing good cause, as described in s. 48.028  
6 (7) (e), for departing from that order.

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

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

15 (c) *Service of petition and notice.* 1. Except as provided in subd. 3. and sub. (6)  
16 (b) 2., the petitioner shall cause the petition and notice of the time and place of the  
17 hearing under par. (e) to be served at least 7 days before the time of the hearing upon  
18 all interested persons. Failure of the petitioner to provide notice to all interested  
19 persons shall deprive the court of jurisdiction unless notice is specifically waived by  
20 an interested person or by the court for good cause shown.

21 2. A notice shall be in writing. A copy of the petition and any other required  
22 document shall be attached to the notice. Except as provided in subd. 3. and sub. (6)  
23 (b) 2., notice shall be delivered in person or by certified mail. Notice is considered to  
24 be given by proof of personal delivery, by proof that the notice was sent by certified

1 mail to the last-known address of the recipient, or, if the recipient is an adult, by the  
2 written admission of service of the person served.

3 3. If the petitioner knows or has reason to know that the child is an Indian child,  
4 notice to the Indian child's parent, Indian custodian, and Indian tribe shall be  
5 provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under  
6 par. (e) or (f) until at least 10 days after receipt of the notice by the Indian child's  
7 parent, Indian custodian, and Indian tribe or, if the identity or location of the Indian  
8 child's parent, Indian custodian, or tribe cannot be determined, until at least 15 days  
9 after receipt of the notice by the U.S. secretary of the interior. On request of the  
10 Indian child's parent, Indian custodian, or Indian tribe, the court shall grant a  
11 continuance of up to 20 additional days to enable the requester to prepare for the  
12 hearing.

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

24 (e) *Initial hearing.* 1. The initial hearing on a petition for guardianship, other  
25 than a petition for emergency guardianship under sub. (6), shall be heard within 45

1 days after the filing of the petition. At the hearing, the court shall first determine  
 2 whether any party wishes to contest the petition. If the petition is not contested, the  
 3 court shall immediately proceed to a fact-finding and dispositional hearing, unless  
 4 an adjournment is requested. If the petition is contested and all parties consent, the  
 5 court may proceed immediately to a fact-finding and dispositional hearing. If all  
 6 parties do not consent or if an adjournment is requested, the court shall set a date  
 7 for a fact-finding and dispositional hearing that allows reasonable time for the  
 8 parties to prepare but is not more than 30 days after the initial hearing.

9 2. The proposed guardian and any proposed successor guardian shall be  
 10 physically present at <sup>all</sup> any hearing unless the court excuses the attendance of either  
 11 or, for good cause shown, permits attendance by telephone. The child is not required  
 12 to attend the hearing but if the child has nominated the proposed guardian, the child  
 13 shall provide to the <sup>any hearings</sup> guardian ad litem sufficient information for the guardian ad  
 14 litem to advise the court on whether the nomination is in the best interests of the  
 15 child.

16 3. If a man who has been given notice under par. (c) 1. appears at the initial  
 17 hearing, alleges that he is the father of the child, and states that he wishes to  
 18 establish the paternity of the child, s. 48.299 (6) applies. The court may order a  
 19 temporary guardianship under sub. (5) pending the outcome of the paternity  
 20 proceedings.

21 (f) *Fact-finding and dispositional hearing.* The court shall hold the  
 22 fact-finding and dispositional hearing at the time specified or set by the court under  
 23 this subdivision, at which any party may present evidence, including expert  
 24 testimony, and argument relating to the allegations in the petition. The court shall  
 25 determine whether the petitioner has proven the allegations in the petition under

1 par. (b) by clear and convincing evidence and shall immediately proceed to determine  
2 the appropriate disposition under par. (h), considering the factors under par. (g).

3 (g) *Dispositional factors*. In determining the appropriate disposition under par.  
4 (h), the court shall consider all of the following:

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

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

11 3. If the child is an Indian child, the order of placement preference under s.  
12 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as  
13 described in s. 48.028 (7) (e), for departing from that order.

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

16 (h) *Disposition*. At the conclusion of the hearing under par. (f), the court shall  
17 grant one of the following dispositions, unless the court adjourns the hearing under  
18 par. (i):

19 1. A disposition dismissing the petition if the court finds that the petitioner has  
20 not proved the allegations in the petition by clear and convincing evidence or  
21 determines that appointment of the proposed guardian as the child's guardian is not  
22 in the best interests of the child. Dismissal of a petition under this subdivision does  
23 not preclude the court from referring the child to the intake worker for an intake  
24 inquiry under s. 48.24 or from acting as an intake worker at the court's discretion  
25 under s. 48.10.

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

LIST IN PAR. 7  
SUB. PAR. 7

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

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

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

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

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

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

3 1. Any person may petition for the appointment of an emergency guardian for  
4 a child. The petition shall contain the information required under sub. (4) (b) and  
5 shall specify the reasons for the appointment of an emergency guardian and the  
6 powers requested for the emergency guardian.

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

18 3. The court shall appoint a guardian ad litem for the child as soon as possible  
19 after the filing of the petition. The court shall attempt to appoint the guardian ad  
20 litem before the hearing on the petition, but may appoint the guardian ad litem after  
21 the hearing if the court finds that exigent circumstances require the immediate  
22 appointment of an emergency guardian. The guardian ad litem shall meet with or  
23 observe the child before the hearing or as soon as is practicable after the hearing, but  
24 not later than 3 calendar days after the hearing. The guardian ad litem shall report  
25 to the court on the advisability of the emergency guardianship at the hearing or, if



1 not appointed until after the hearing, not later than 7 calendar days after the  
2 hearing.

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

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

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

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

23 (d) *Cessation of powers.* The duties and powers of the emergency guardian  
24 cease upon the expiration of the period specified in par. (a), or the termination as  
25 determined by the court of the situation of the child that was the cause of the

1 emergency guardianship. Upon cessation of an emergency guardianship, the  
2 emergency guardian shall file with the court any report that the court requires.

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

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

16 2. After hearing, the court may designate one or more successor guardians  
17 whose appointment shall become effective immediately upon the death,  
18 unwillingness or inability to act, resignation, or removal by the court of the initially  
19 appointed guardian or during a period, as determined by the initially appointed  
20 guardian, when the initially appointed guardian is temporarily unable to fulfill his  
21 or her duties, including during an extended vacation or illness. The powers and  
22 duties of the successor guardian shall be the same as those of the initially appointed  
23 guardian. The successor guardian shall receive a copy of the court order establishing  
24 or modifying the initial guardianship and of the order designating the successor  
25 guardian. Upon the occurrence of an event specified in this subdivision, the

1 successor guardian shall so notify the court and request the court to issue new letters  
2 of guardianship. Upon notification, the court shall issue new letters of guardianship  
3 that specify that the successor guardianship is permanent or that specify the period  
4 for a temporary successor guardianship.

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

12 2. If the appointment under subd. 1. is made without hearing, the successor  
13 guardian shall provide notice to all interested persons of the appointment and the  
14 right to petition for reconsideration of the appointment of the successor guardian.  
15 The notice shall be served personally or by mail not later than 7 days after the  
16 appointment.

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

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

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

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

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

- 18 1. Abuses or neglects the child or knowingly permits others to do so.
- 19 2. Fails to disclose information specified in sub. (4) (d) that would have  
20 prevented appointment of the person as guardian.
- 21 3. Fails to follow or comply with the court's order.
- 22 4. Otherwise fails to perform any of his or her duties as a guardian under s.  
23 48.023.

24 (c) *Procedure.* Any interested person or other person approved by the court may  
25 file a petition requesting a review of the conduct of a guardian, or the court, on its

1 own motion, may propose such a review. The request or motion shall allege facts  
2 sufficient to show cause under par. (b) for the court to impose a remedy under par.  
3 (d). The court shall hold a hearing on the request or motion not more than 30 days  
4 after the filing of the request or proposal. Not less than 7 days before the date of the  
5 hearing, the person requesting or proposing the review shall provide notice of the  
6 hearing to the child, his or her parents, the guardian, and any other persons required  
7 by the court. A copy of the request or motion shall be attached to the notice.

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

- 11 1. Remove the guardian.
- 12 2. Remove the guardian and appoint a successor guardian.
- 13 3. Enter any other order that may be necessary or appropriate to compel the  
14 guardian to carry out the guardian's duties, including an order setting reasonable  
15 rules of visitation with the child.
- 16 4. Modify the duties and authority of the guardian.
- 17 5. Require the guardian to pay any costs of the proceeding, including costs of  
18 service and attorney fees, if the court finds that the guardian's conduct was  
19 egregious.

20 (11) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* A guardianship  
21 under this section shall continue until the child attains the age of 18 years unless any  
22 of the following occurs:

- 23 1. The guardianship is for a lesser period of time and that time has expired.
- 24 2. The child marries.
- 25 3. The child dies.

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

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

5           6. The guardian is removed for cause under sub. (10) (d) 1. and a successor  
6 guardian is not appointed.

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

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

10          (b) *Termination on request of parent or child.* 1. A parent of the child or the  
11 child may file a petition requesting that a guardianship order entered under sub. (4)  
12 (h) 2., (5), (6), (8), or (9) be terminated. The petition shall allege facts sufficient to  
13 show that there has been a substantial change in circumstances since the last order  
14 affecting the guardianship was entered, that the parent is fit, willing, and able to  
15 carry out the duties of a guardian or that the compelling facts and circumstances on  
16 which the guardianship was granted no longer exist, and that termination of the  
17 guardianship would be in the best interests of the child.

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

21           3. If a hearing is to be held, by no less than 7 days before the date of the hearing,  
22 the parent or child requesting the termination shall provide notice of the hearing to  
23 the child, the child's parents, the guardian, and any other persons required by the  
24 court. A copy of the petition shall be attached to the notice. The court shall terminate

1 the guardianship if the court finds that the petitioner has proven the allegations in  
2 the petition under subd. 1. by clear and convincing evidence. *a preponderance*  
*of the evidence*

3 **SECTION 25.** Subchapter XX of chapter 48 [precedes 48.98] of the statutes is  
4 renumbered subchapter XXI of chapter 48 [precedes 48.98].

5 **SECTION 26.** 48.981 (7) (a) 11v. of the statutes is created to read:

6 48.981 (7) (a) 11v. A guardian ad litem for a child who is the subject of a  
7 guardianship proceeding under s. 48.9795 to the extent necessary to fulfill the duties  
8 and responsibilities required of the guardian ad litem under s. 48.9795 (3).

9 **SECTION 27.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

10 51.30 (4) (b) 18. a. In this subdivision, “abuse” has the meaning given in s. 51.62  
11 (1) (ag); “neglect” has the meaning given in s. 51.62 (1) (br); and “parent” has the  
12 meaning given in s. 48.02 (13), except that “parent” does not include the parent of a  
13 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
14 or for whom a guardian is appointed under, ~~or~~ s. 48.9795 or 54.10 or s. 880.33, 2003  
15 stats.

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

17 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed  
18 under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
19 developmental disability who has a parent or has a guardian appointed under s.  
20 48.831 and does not have a guardian appointed under s. 48.9795 or 54.10 or s. 880.33,  
21 2003 stats., information concerning the patient that is obtainable by staff members  
22 of the agency or nonprofit corporation with which the agency has contracted is  
23 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,  
24 if any; the name, birth date and county of residence of the patient; information  
25 regarding whether the patient was voluntarily admitted, involuntarily committed

1 or protectively placed and the date and place of admission, placement or  
2 commitment; and the name, address and telephone number of the guardian of the  
3 patient and the date and place of the guardian's appointment or, if the patient is a  
4 minor with developmental disability who has a parent or has a guardian appointed  
5 under s. 48.831 and does not have a guardian appointed under s. 48.9795 or 54.10  
6 or s. 880.33, 2003 stats., the name, address and telephone number of the parent or  
7 guardian appointed under s. 48.831 of the patient.

8 **SECTION 29.** 54.01 (10) of the statutes is amended to read:

9 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to  
10 manage the income and assets, ~~which may include, by court order, digital property,~~  
11 ~~as defined in s. 711.03 (10), and provide for the essential requirements for health and~~  
12 ~~safety and the personal needs of a minor, an individual found incompetent, or a~~  
13 ~~spendthrift or to manage the income and assets of a minor. A person's assets may~~  
14 include, by court order, digital property, as defined in s. 711.03 (10).

15 **SECTION 30.** 54.10 (1) of the statutes is amended to read:

16 54.10 (1) A court may appoint ~~a guardian of the person or a guardian of the~~  
17 ~~estate, or both,~~ for an individual if the court determines that the individual is a  
18 minor. Except as provided in ss. <sup>48.427</sup>48.831, 48.977, and 48.978, an appointment of a  
19 guardian of the person of a minor shall be conducted under the procedures specified  
20 in s. 48.9795.

21 **SECTION 31.** 54.15 (6) of the statutes is amended to read:

22 54.15 (6) TESTAMENTARY NOMINATION BY PROPOSED WARD'S PARENTS. Subject to the  
23 rights of a surviving parent, a parent may by will nominate a guardian and successor  
24 guardian of the ~~person or estate~~ for any of his or her minor children who is in need  
25 of guardianship, unless the court finds that appointment of the guardian or successor



1 guardian is not in the minor's best interests. For an individual who is aged 18 or older  
2 and is found to be in need of guardianship by reason of a developmental disability  
3 or serious and persistent mental illness, a parent may by will nominate a  
4 testamentary guardian. The parent may waive the requirement of a bond for such  
5 an estate that is derived through a will.

6 **SECTION 32.** 54.25 (2) (d) 1. of the statutes is amended to read:

7 54.25 (2) (d) 1. A court may authorize a guardian of the person to exercise all  
8 or part of any of the powers specified in subd. 2. only if it finds, by clear and  
9 convincing evidence, that the individual lacks evaluative capacity to exercise the  
10 power. The court shall authorize the guardian of the person to exercise only those  
11 powers that are necessary to provide for the individual's personal needs, safety, and  
12 rights and to exercise the powers in a manner that is appropriate to the individual  
13 and that constitutes the least restrictive form of intervention. *plain crossing*  
14 ~~the authority of the guardian of the person with respect to any power to allow the~~  
15 ~~individual to retain power to make decisions about which the individual is able~~  
16 ~~effectively to receive and evaluate information and communicate decisions.~~ When  
17 a court appoints a guardian for a minor, the guardian shall be granted care, custody,  
18 and control of the person of the minor.

19 **SECTION 33.** 54.25 (2) (d) 2. o. of the statutes is amended to read:

20 54.25 (2) (d) 2. o. The power to have custody of the ward, if an adult, and the  
21 power to have care, custody, and control of the ward, if a minor.

22 **SECTION 34.** 54.52 (1) of the statutes is amended to read:

23 54.52 (1) A person may at any time bring a petition for the appointment of a  
24 standby guardian of the person or estate of an individual who is determined under  
25 s. 54.10 to be incompetent, a minor, or a spendthrift or for the appointment of a

1 standby guardian of the estate of a minor, except that, as specified in s. 48.978 a  
2 petition for the appointment of a standby guardian of the person or ~~property estate~~,  
3 or both, of a minor to assume the duty and authority of guardianship on the  
4 incapacity, death, or debilitation and consent, of the minor's parent ~~may~~ shall be  
5 brought under s. 48.978.

6 **SECTION 35.** 54.56 of the statutes is renumbered 48.9795 (12) and amended to  
7 read:

8 **48.9795 (12) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS.** (a)  
9 In this ~~section~~ subsection, "stepparent" means the surviving spouse of a deceased  
10 parent of a ~~minor~~ child, whether or not the surviving spouse has remarried.

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

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

24 (cm) 1. Except as provided in ~~par. (b)~~ subd. 2., the court may not grant visitation  
25 privileges to a grandparent or stepparent under this ~~section~~ subsection if the

1 grandparent or stepparent has been convicted under s. 940.01 of the first-degree  
2 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of  
3 a parent of the minor child, and the conviction has not been reversed, set aside, or  
4 vacated.

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

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

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

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

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

4 **SECTION 36.** 54.57 of the statutes is renumbered 48.9795 (13) and amended to  
5 read:

6 48.9795 (13) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF ~~A~~ PARENT KILLS  
7 OTHER PARENT. (a) Except as provided in sub. (2), ~~in an action under this chapter that~~  
8 ~~affects a minor par. (b)~~, a court may not grant to a parent of the minor a child who  
9 is the subject of a proceeding under this section visitation or physical placement  
10 rights with the minor child if the parent has been convicted under s. 940.01 of the  
11 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional  
12 homicide, of the minor's child's other parent, and the conviction has not been  
13 reversed, set aside, or vacated.

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

18 **SECTION 37.** 55.03 (1) of the statutes is amended to read:

19 55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting  
20 as a guardian appointed under s. 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003 stats.,  
21 ~~or ch. 54~~ may be a provider of protective services or protective placement for its ward  
22 under this chapter.

23 **SECTION 38.** 115.76 (12) (b) 2. of the statutes is amended to read:

24 115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was  
25 made a ward of the state, county, or child welfare agency under ch. 54, 2017 stats.,

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

3 **SECTION 39.** 118.125 (2) (L) of the statutes is amended to read:

4 118.125 (2) (L) A school board shall disclose the pupil records of a pupil in  
5 compliance with a court order under s. 48.236 (4) (a), 48.345 (12) (b), 48.9795 (3) (d),  
6 938.34 (7d) (b), 938.396 (1) (d), or 938.78 (2) (b) 2. after making a reasonable effort  
7 to notify the pupil's parent or legal guardian.

8 **SECTION 40.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

9 146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62  
10 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the  
11 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a  
12 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
13 or for whom a guardian is appointed under s. 48.9795 or 54.10 or s. 880.33, 2003 stats.

14 **SECTION 41.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

15 146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed  
16 under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
17 developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a  
18 guardian appointed under s. 48.831 and does not have a guardian appointed under  
19 s. 48.9795 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that  
20 is obtainable by staff members of the agency or nonprofit corporation with which the  
21 agency has contracted is limited, except as provided in subd. 9. e., to the nature of  
22 an alleged rights violation, if any; the name, birth date and county of residence of the  
23 patient; information regarding whether the patient was voluntarily admitted,  
24 involuntarily committed or protectively placed and the date and place of admission,  
25 placement or commitment; and the name, address and telephone number of the

1 guardian of the patient and the date and place of the guardian's appointment or, if  
2 the patient is a minor with developmental disability who has a parent or has a  
3 guardian appointed under s. 48.831 and does not have a guardian appointed under  
4 s. 48.9795 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number  
5 of the parent or guardian appointed under s. 48.831 of the patient.

6 **SECTION 42.** 757.69 (1) (g) 5. of the statutes is amended to read:

7 757.69 (1) (g) 5. Conduct uncontested proceedings under s. 48.13, 48.133,  
8 48.9795, 938.12, 938.13, or 938.18.

9 **SECTION 43.** 808.075 (4) (a) 9m. of the statutes is created to read:

10 808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.9795 (10).

11 **SECTION 44.** 808.075 (4) (a) 11. of the statutes is amended to read:

12 808.075 (4) (a) 11. Termination of guardianship under s. 48.9795 (11) or 48.977  
13 (7), including removal of a guardian.

14 **SECTION 45.** 808.075 (4) (a) 13. of the statutes is created to read:

15 808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.9795 (8).

16 **SECTION 46.** 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14.

17 and amended to read:

18 808.075 (4) (a) 14. Order for visitation under s. ~~54.56~~ 48.9795 (12).

19 **SECTION 47.** 814.66 (1) (m) of the statutes is renumbered 814.61 (13m) and  
20 amended to read:

21 814.61 (13m) For filing a petition under s. ~~54.56~~ 48.9795 (12), whether in a  
22 guardianship or temporary guardianship proceeding or to commence an  
23 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.

1           **SECTION 48.** 938.345 (1) (e) of the statutes is amended to read:

2           938.345 (1) (e) Place any juvenile not found under ch. 880, 2003 stats., or ch.  
3           46, 48, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to  
4           be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively  
5           treats one or more of those categories of juveniles.

6           **SECTION 49. Nonstatutory provisions.**

7           (1) **TRANSITION.** Notwithstanding the treatment of ss. 54.01 (10) and 54.10 (1),  
8           all guardianships of the person of a minor under s. 54.10, 2017 stats., or ch. 880, 2003  
9           stats., in effect immediately before <sup>on</sup> the effective date of this subsection remain in  
10           effect and shall be considered guardianships under s. 48.9795 until terminated  
11           under s. 48.9795 (11), all matters commenced under ch. 54, 2017 stats., with respect  
12           to a guardianship of the person of a minor that are pending on the effective date of  
13           this subsection shall be completed under ch. 54, 2017 stats., and all orders appointing  
14           a guardian of the person of a minor under ch. 54, 2017 stats., entered beginning on  
15           the effective date of this subsection shall be considered guardianships under s.  
16           48.9795.

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

22           **SECTION 50. Initial applicability.**

23           (1) **PETITIONS FOR GUARDIANSHIP.** Except as provided in sub. (2), this act first  
24           applies to a petition for guardianship filed on the effective date of this subsection.

1 (2) DUTIES AND AUTHORITY OF GUARDIAN OF THE PERSON. The treatment of ss.  
2 48.023 (intro.), (3), and (4) and 48.9795 (2)(c) 1. and 5. first applies to a guardianship  
3 of the person of a minor in effect on the effective date of this subsection.

4 **SECTION 51. Effective date.**

5 (1) This act takes effect on the first day of the 6th month beginning after  
6 publication.

7 (END)



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INS 5-1

**SECTION 1.** 48.255 (1) (intro.) of the statutes is amended to read:

48.255 (1) (intro.) A petition initiating proceedings under this chapter, other than a petition under s. 48.133 or 48.9795, shall be entitled, "In the interest of (child's name), a person under the age of 18" and shall set forth with specificity:

**History:** 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109; 2009 a. 94; 2013 a. 170; 2015 a. 373, 381.

INS 11-4

*Venue.* Venue for guardianship under this section shall be in the child's county of residence or in the county in which the child is physically present, or, if the child is a nonresident, the county in which the petitioner proposes that the child resides. 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.

(b)

INS 13-3

(d) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subds. 2. and 5., a guardian appointed under sub. (4) (h) 2. shall have all of the following duties and authority:

a. All of the duties and authority specified in s. 48.023.

b. Subject to an order of a court of competent jurisdiction, the authority to determine reasonable visitation with the child.

c. Notwithstanding s. 747.481, the right to change the residence of the child from this state to another state.

d. The duty to immediately notify the court that appointed the guardian of any change in the address of the guardian or child and to make an annual report to that court on the condition of the child. The report shall include the location of the child, the health condition of the child, and any recommendations regarding the child.

INS 22-1

2. A disposition ordering the guardianship and issuing letters of guardianship if the court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence and determines that such an appointment is in the best interests of the child. A dispositional order under this section may not change the placement of a child under the supervision of a court pursuant to s. 48.13, 48.14 (1), (3), (5), or (12), 938.12, 938.13, or 938.135. The disposition shall include all of the following:

a. Whether the appointment is for a full, limited, or temporary guardianship, and, if limited or temporary, what the limitations and expiration date of the guardianship are.

b. If applicable, <sup>the</sup> an amount of support to be paid by the child's parents.

c. If applicable, and subject to sub. (13), reasonable rules of parental visitation, which rules the court shall determine in accordance with the applicable factors specified in s. 767.41 (5). Subject to a court order under this subdivision or sub. (9) or (13), the guardian's decision regarding visitation is presumed to be in the best interest of the child and, if the court reviews the decision, the petitioner has the burden of proving by clear and convincing evidence that the decision of the guardian is not in the best interest of the child.