



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0241/P4
EAW:amn&cjs

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Due by 11/19 @

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Regent

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* 48.09 (5), 48.14 (2) (b), 48.14 (11), 48.15, 48.235 (1) (c), 48.255 (1)
4 (intro.), 48.299 (4) (a), 48.299 (4) (b), 48.299 (6) (intro.), 48.299 (6) (d), 48.299 (7),
5 48.368 (1), 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (8), 48.978 (7), 51.30 (4)
6 (b) 18. a., 51.30 (4) (b) 18. c., 54.01 (10), 54.10 (1), 54.15 (6), 54.25 (2) (d) 1., 54.25
7 (2) (d) 2. o., 54.52 (1), 55.03 (1), 115.76 (12) (b) 2., 118.125 (2) (L), 146.82 (2) (a)
8 9. a., 146.82 (2) (a) 9. c., 757.69 (1) (g) 5., 808.075 (4) (a) 11. and 938.345 (1) (e);
9 and *to create* subchapter XX (title) of chapter 48 [precedes 48.978], 48.9795,
10 48.981 (7) (a) 11v., 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the statutes;
11 **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.

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

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PREP.

1 **SECTION 1.** 48.09 (5) of the statutes is amended to read:

2 48.09 (5) By the district attorney or, if designated by the county board of
3 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,
4 or 48.977 or, if applicable, s. 48.9795. If the county board transfers this authority to
5 or from the district attorney on or after May 11, 1990, the board may do so only if the
6 action is effective on September 1 of an odd-numbered year and the board notifies
7 the department of administration of that change by January 1 of that odd-numbered
8 year.

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

10 48.14 (2) (b) The appointment and removal of a guardian of the person for a
11 child under ss. 48.427, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and 48.978, and
12 ~~ch. 54~~ 48.9795 and for a child found to be in need of protection or services under s.
13 48.13 because the child is without parent or guardian.

14 **SECTION 3.** 48.14 (11) of the statutes is amended to read:

15 48.14 (11) Granting visitation privileges under s. ~~54.56~~ 48.9795 (12).

16 **SECTION 4.** 48.15 of the statutes is amended to read:

17 **48.15 Jurisdiction of other courts to determine legal custody.** Except
18 as provided in ~~s. ss.~~ ss. 48.028 (3) and 48.9795 (2) (b) 2., nothing in this chapter deprives
19 another court of the right to determine the legal custody of a child by habeas corpus
20 or to determine the legal custody or guardianship of a child if the legal custody or
21 guardianship is incidental to the determination of an action pending in that court.

1 Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise
2 jurisdiction under this chapter and ch. 938 is paramount in all cases involving
3 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn
4 children and their expectant mothers alleged to come within the provisions of ss.
5 48.133 and 48.14 (5).

6 **SECTION 5.** 48.235 (1) (c) of the statutes is amended to read:

7 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is
8 the subject of a proceeding to terminate parental rights, whether voluntary or
9 involuntary, for a child who is the subject of a contested adoption proceeding, and for
10 a child who is the subject of a proceeding under s. 48.977 or, 48.978, or 48.9795.

11 **SECTION 6.** 48.255 (1) (intro.) of the statutes is amended to read:

12 48.255 (1) (intro.) A petition initiating proceedings under this chapter, other
13 than a petition under s. 48.133 or 48.9795, shall be entitled, "In the interest of (child's
14 name), a person under the age of 18" and shall set forth with specificity:

15 **SECTION 7.** 48.299 (4) (a) of the statutes is amended to read:

16 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at
17 the fact-finding hearings under ss. 48.31, 48.42, 48.977 (4) (d) and, 48.978 (2) (e) and
18 (3) (f) 2., and 48.9795.

19 **SECTION 8.** 48.299 (4) (b) of the statutes is amended to read:

20 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor
21 statutory rules of evidence are binding at a hearing for a child held in custody under
22 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a
23 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing
24 about changes in placement, trial reunifications, revision of dispositional orders,
25 extension of dispositional orders, or termination of guardianship orders entered

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1 under s. 48.977 (4) (h) 2. or (6) ~~or~~, 48.978 (2) (j) 2. or (3) (g), or 48.9795. At those
2 hearings, the court shall admit all testimony having reasonable probative value, but
3 shall exclude immaterial, irrelevant, or unduly repetitious testimony or evidence
4 that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has
5 demonstrable circumstantial guarantees of trustworthiness. The court shall give
6 effect to the rules of privilege recognized by law. The court shall apply the basic
7 principles of relevancy, materiality, and probative value to proof of all questions of
8 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may
9 be made and shall be noted in the record.

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

11 48.299 (6) (intro.) If a man who has been given notice under s. 48.27 (3) (b) 1.,
12 48.977 (4) (c) 1., 48.978 (2) (c) 1., or 48.9795 (4) (c) 1. appears at any hearing for which
13 he received the notice, alleges that he is the father of the child, and states that he
14 wishes to establish the paternity of the child, all of the following apply:

15 **SECTION 10.** 48.299 (6) (d) of the statutes is amended to read:

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

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

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

9 **SECTION 12.** 48.368 (1) of the statutes is amended to read:

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

18 **SECTION 13.** 48.62 (2) of the statutes is amended to read:

19 48.62 (2) A relative, a guardian of a child, or a person delegated care and
20 custody of a child under s. 48.979 who provides care and maintenance for the child
21 is not required to obtain the license specified in this section. The department, county
22 department, or licensed child welfare agency as provided in s. 48.75 may issue a
23 license to operate a foster home to a relative who has no duty of support under s. 49.90
24 (1) (a) and who requests a license to operate a foster home for a specific child who is
25 either placed by court order or who is the subject of a voluntary placement agreement

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1 under s. 48.63. The department, a county department, or a licensed child welfare
2 agency may, at the request of a guardian appointed under s. 48.977 ~~or~~, 48.978, or
3 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003 stats., license the guardian's home as
4 a foster home for the guardian's minor ward who is living in the home and who is
5 placed in the home by court order. Relatives with no duty of support and guardians
6 appointed under s. 48.977 ~~or~~, 48.978, or 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003
7 stats., who are licensed to operate foster homes are subject to the department's
8 licensing rules.

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

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

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

18 48.831 (1m) (e) A guardian appointed under s. 48.9795 or ch. 54, 2017 stats.,
19 or ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court
20 under s. 48.9795 (11) or s. 54.54 (1), 2017 stats., or s. 880.17 (1), 2003 stats.

21 **SECTION 16.** 48.977 (8) of the statutes is amended to read:

22 48.977 (8) ~~RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS~~ OTHER GUARDIANSHIP
23 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian
24 appointed under s. 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003 stats.

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

3 **SECTION 17.** Subchapter XX (title) of chapter 48 [precedes 48.978] of the
4 statutes is created to read:

5 **OTHER GUARDIANSHIPS AND DELEGATION**

6 **OF POWER BY PARENT**

7 **SECTION 18.** 48.978 (7) of the statutes is amended to read:

8 **48.978 (7) RELATIONSHIP TO ~~CH. 54~~ OTHER GUARDIANSHIP PROCEDURES.** (a) Except
9 when a different right, remedy, or procedure is provided under this section, the
10 rights, remedies, and procedures provided in s. 48.9795 or ch. 54, whichever is
11 applicable, shall govern a standby guardianship created under this section.

12 (b) This section does not abridge the duties or authority of a guardian appointed
13 under s. 48.9795, ch. 880, 2003 stats., or ch. 54.

14 (c) Nothing in this section prohibits an individual from petitioning a court for
15 the appointment of a guardian of the person under s. 48.9795 or a guardian of the
16 estate under ch. 54.

17 **SECTION 19.** 48.9795 of the statutes is created to read:

18 **48.9795 Appointment of guardian of the person for a child. (1)**

19 **DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

13 g. If the child is an Indian child, the Indian child's Indian custodian and Indian
14 tribe.

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

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

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

20 b. The child's parent and guardian.

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

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

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

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

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

8 **(2) APPOINTMENT; VENUE; NOMINATION; DUTY AND AUTHORITY.** (a) *Venue.* Except
9 as provided under par. (b) 2., venue for guardianship under this section shall be in
10 the child's county of residence or in the county in which the child is physically
11 present, or, if the child is a nonresident, the county in which the petitioner proposes
12 that the child resides. The court may, upon a motion and for good cause shown,
13 transfer the case, along with all appropriate records, to the county in which a
14 dispositional order has been issued under this chapter.

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

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

7 2. If the child is the subject of an action pending under s. 48.13^(48.133) or 48.14 or ch.
8 938, any subsequent petition filed under this section shall be heard by the court
9 authorized to exercise jurisdiction over the pending action. The court shall stay a
10 guardianship proceeding for the appointment of a full, limited, or temporary
11 guardian of the person for a child under par. (d) 1., 2., or 3. until the action pending
12 under s. 48.13^(48.133) or 48.14 or ch. 938 is resolved. The court may appoint an emergency
13 guardian under sub. (6) while an action is pending under s. 48.13^(48.133) or 48.14 or ch. 938
14 if the court finds that the best interests of the child require the immediate
15 appointment of a guardian.

16 3. A petition filed under this section may not seek to change an order entered
17 pursuant to a finding under s. 48.13, ~~938.12, or 938.13, or an order transferring~~
18 ~~guardianship to an agency pursuant to s. 48.427 (3m).~~
^{48.133, or 48.14 or ch. 938}

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

23 (c) *Nomination by parent or child.* 1. A parent may nominate a guardian and
24 successor guardian for any of his or her children who is in need of guardianship,
25 including a nomination by will. Subject to the rights of a surviving parent, the court

1 shall appoint the person nominated as guardian or successor guardian, unless the
2 court finds that appointment of the person nominated is not in the child's best
3 interests.

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

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

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

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

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

20 c. Notwithstanding s. 767.481, the right to change the residence of the child
21 from this state to another state. The

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

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

12 3. 'Temporary guardianship.' If it is demonstrated to the court that a child's
13 particular situation, including the inability of the child's parent to provide for the
14 care, custody, and control of the child for a temporary period of time, requires the
15 appointment of a temporary guardian, the court may appoint a temporary guardian
16 as provided under sub. (5).

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

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

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

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

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

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

13 1. Personally, or through a trained designee, meet with or observe the child,
14 assess the appropriateness and safety of the environment of the child, and, if
15 appropriate to the age and developmental level of the child, interview the child and
16 determine the child's goals and concerns regarding the proposed guardianship.

17 2. Interview the proposed guardian, personally or through a trained designee,
18 visit the ^{Proposed} guardian's home, if appropriate, and report to the court concerning the
19 suitability of the proposed guardian to serve as guardian of the child.

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

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

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

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

2. If there is an action pending under s. 48.13, 48.14 (1), (3), (5), or (12), 938.12, 938.13, or 938.135, a petition under this subsection may be filed by any party to the pending action if the petition is consistent with the child's permanency plan and does not seek to change the requirements of any court order issued under s. 48.21, 48.213, 48.217, 48.345, 48.347, 48.355, 48.357, 48.363, 48.365, 48.427 (3m), 48.43, 48.977, 938.21, 938.217, 938.34, 938.345, 938.355, 938.357, 938.363, or 938.365.

or ch. 938

48.13 or

or any person approved by the court

pre-existing

48.13, 48.133,

or 48.14 or ch. 938

1 (b) *Petition; form and content.* A petition for guardianship may include an
2 application for protective placement or protective services or both under ch. 55. The
3 petition shall be entitled “In the interest of ... (child’s name), a person under the age
4 of 18” and shall state all of the following, if known to the petitioner:

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

6 2. The names and addresses of the petitioner, the child’s parents, current
7 guardian, and legal custodian, if any, the proposed guardian, any proposed successor
8 guardians, and all other interested persons.

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

11 4. If the petitioner is requesting a full guardianship, the facts and
12 circumstances establishing that the child’s parents are unfit, unwilling, or unable to
13 provide for the care, custody, and control of the child or other compelling facts and
14 circumstances demonstrating that a full guardianship is necessary.

15 5. If the petitioner is requesting a limited guardianship, the facts and
16 circumstances establishing that the child’s parents need assistance in providing for
17 the care, custody, and control of the child and a statement of the specific duties and
18 authority under sub. (2) (d) sought by the petitioner for the proposed guardian and
19 the specific parental rights and duties that the petitioner seeks to have transferred.

20 6. If the petitioner is requesting a temporary guardianship, the facts and
21 circumstances establishing that the child’s particular situation, including the
22 inability of the child’s parents to provide for the care, custody, and control of the child
23 for a temporary period of time, requires the appointment of a temporary guardian;
24 the reasons for the appointment of a temporary guardian; and the powers requested
25 for the temporary guardian.

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

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

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

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

11 11. If the petitioner knows or has reason to know that the child is an Indian
12 child, reliable and credible information showing that continued custody of the child
13 by the child's parent or Indian custodian is likely to result in serious emotional or
14 physical damage to the child under s. 48.028 (4) (d) 1. and that active efforts under
15 s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family
16 and that those efforts have proved unsuccessful and, if the proposed guardianship
17 would change the placement of the child from the home of his or her parent or Indian
18 custodian to a placement outside that home, a statement as to whether the new
19 placement is in compliance with the order of placement preference under s. 48.028
20 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance
21 with that order, specific information showing good cause, as described in s. 48.028
22 (7) (e), for departing from that order.

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

1 13. Whether there is an action pending under s. 48.13 or 48.14 or ch. 938 or the
2 child is subject to a court order under s. 48.21, 48.213, 48.217, 48.345, 48.347, 48.355,
3 48.357, 48.363, 48.365, 48.427 (3m), 48.43, 48.977, 938.21, 938.217, 938.34, 938.345,
4 938.355, 938.357, 938.363, or 938.365.

5 (c) *Service of petition and notice.* 1. Except as provided in subd. 3. and sub. (6)

6 (b) 2., the petitioner shall cause the petition and notice of the time and place of the
7 hearing under par. (e) to be served at least 7 days before the time of the hearing upon
8 all interested persons. Failure of the petitioner to provide notice to all interested
9 persons shall deprive the court of jurisdiction unless notice is specifically waived by
10 an interested person or by the court for good cause shown.

11 2. A notice shall be in writing. A copy of the petition and any other required
12 document shall be attached to the notice. Except as provided in subd. 3. and sub. (6)

13 (b) 2., notice shall be delivered in person or by certified mail. Notice is considered to
14 be given by proof of personal delivery, by proof that the notice was sent by certified
15 mail to the last-known address of the recipient, or, if the recipient is an adult, by the
16 written admission of service of the person served.

17 3. If the petitioner knows or has reason to know that the child is an Indian child,
18 notice to the Indian child's parent, Indian custodian, and Indian tribe shall be
19 provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under
20 par. (e) or (f) until at least 10 days after receipt of the notice by the Indian child's
21 parent, Indian custodian, and Indian tribe or, if the identity or location of the Indian
22 child's parent, Indian custodian, or tribe cannot be determined, until at least 15 days
23 after receipt of the notice by the U.S. secretary of the interior. On request of the
24 Indian child's parent, Indian custodian, or Indian tribe, the court shall grant a

1 continuance of up to 20 additional days to enable the requester to prepare for the
2 hearing.

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

14 (e) *Initial hearing.* 1. The initial hearing on a petition for guardianship, other
15 than a petition for emergency guardianship under sub. (6), shall be heard within 45
16 days after the filing of the petition. At the hearing, the court shall first determine
17 whether any party wishes to contest the petition. If the petition is not contested, the
18 court shall immediately proceed to a fact-finding and dispositional hearing, unless
19 an adjournment is requested. If the petition is contested and all parties consent, the
20 court may proceed immediately to a fact-finding and dispositional hearing. If all
21 parties do ^{Party does} not consent or if an adjournment is requested, the court shall set a date
22 for a fact-finding and dispositional hearing that allows reasonable time for the
23 parties to prepare but is not more than 30 days after the initial hearing.

24 2. The proposed guardian and any proposed successor guardian shall be
25 physically present at all hearings unless the court excuses the attendance of either

1 or, for good cause shown, permits attendance by telephone. The child is not required
2 to attend any hearings, but if the child has nominated the proposed guardian, the
3 child shall provide to the guardian ad litem sufficient information for the guardian
4 ad litem to advise the court on whether the nomination is in the best interests of the
5 child.

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

11 (f) *Fact-finding and dispositional hearing.* The court shall hold the
12 fact-finding and dispositional hearing at the time specified or set by the court under
13 this paragraph, at which any party may present evidence, including expert
14 testimony, and argument relating to the allegations in the petition. The court shall
15 determine whether the petitioner has proven the allegations in the petition under
16 par. (b) by clear and convincing evidence and shall immediately proceed to determine
17 the appropriate disposition under par. (h), considering the factors under par. (g).

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

20 1. Any nominations made under sub. (2) (c) 1. or 2. and the opinions of the
21 parents and child as to what is in the best interests of the child, but the best interests
22 of the child as determined by the court shall control in making the determination
23 when those nominations and opinions are in conflict with those best interests.

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

1 3. If the child is an Indian child, the order of placement preference under s.
2 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as
3 described in s. 48.028 (7) (e), for departing from that order.

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

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

9 1. A disposition dismissing the petition if the court finds that the petitioner has
10 not proved the allegations in the petition by clear and convincing evidence or
11 determines that appointment of the proposed guardian as the child's guardian is not
12 in the best interests of the child. Dismissal of a petition under this subdivision does
13 not preclude the court from referring the child to the intake worker for an intake
14 inquiry under s. 48.24 or from acting as an intake worker at the court's discretion
15 under s. 48.10.

16 2. A disposition ordering the guardianship and issuing letters of guardianship
17 if the court finds that the petitioner has proved the allegations in the petition by clear
18 and convincing evidence and determines that such an appointment is in the best
19 interests of the child. A dispositional order under this section may not change the
20 placement of a child under the supervision of a court pursuant to s. 48.13, 48.14 (1),

21 (3), (5), or (12), 48.427 (3m), 938.12, 938.13, or 938.135. The disposition shall include
22 all of the following:

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

25 b. If applicable, the amount of support to be paid by the child's parents.

for a full, limited, or
temporary guardianship

Subsection

48.133, or
48.14 (1)

or Ch. 938

1 c. If applicable, and subject to sub. (13), reasonable rules of parental visitation³
2 which rules the court shall determine in accordance with the applicable factors^e
3 specified in s. 767.41 (5). Subject to a court order under this subdivision or sub. (9)
4 or (13), the guardian's decision regarding visitation is presumed to be in the best
5 interest of the child and, if the court reviews the decision, the petitioner has the
6 burden of proving by clear and convincing evidence that the decision of the guardian
7 is not in the best interest of the child.

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

20 (5) TEMPORARY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court
21 may appoint a temporary guardian for a child for a period not to exceed 180 days,
22 except that the court may extend this period for good cause shown for one additional
23 180-day period. The court's determination and order appointing the temporary
24 guardian shall specify the authority of the temporary guardian, which shall be
25 limited to those acts that are reasonably related to the reasons for the appointment

1 that are specified in the petition for temporary guardianship. The authority of the
2 temporary guardian is limited to the performance of those acts stated in the order
3 of appointment.

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

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

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

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

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

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

12 3. The court shall appoint a guardian ad litem for the child as soon as possible
13 after the filing of the petition. The court shall attempt to appoint the guardian ad
14 litem before the hearing on the petition, but may appoint the guardian ad litem after
15 the hearing if the court finds that exigent circumstances require the immediate
16 appointment of an emergency guardian. The guardian ad litem shall meet with or
17 observe the child before the hearing or as soon as is practicable after the hearing, but
18 not later than 3 calendar days after the hearing. The guardian ad litem shall report
19 to the court on the advisability of the emergency guardianship at the hearing or, if
20 not appointed until after the hearing, not later than 7 calendar days after the
21 hearing.

22 4. The court shall hold a hearing on the emergency guardianship petition as
23 soon as possible after the filing of the petition or, for good cause shown, may issue a
24 temporary order appointing an emergency guardian without a hearing that shall
25 remain in effect until a hearing is held on the emergency guardianship petition. If

1 appointed prior to the hearing, the guardian ad litem shall attend the hearing in
2 person or by telephone.

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

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

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

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

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

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

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

24 (b) *Appointment; when no guardian.* 1. If a guardian dies, is removed by order
25 of the court, or resigns and the resignation is accepted by the court, the court, on its

1 own motion or upon petition of any interested person, may appoint a competent and
2 suitable person as successor guardian. The court may, upon request of any interested
3 person or on its own motion, direct that the petition or motion for the appointment
4 of a successor guardian be heard in the same manner and subject to the same
5 requirements as provided under this section for an initial appointment of a guardian.

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

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

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

Other than the
child

1 (c) If a hearing is to be held, the person requesting or proposing the modification
2 shall notify all interested persons at least 7 days prior to the hearing of the date,
3 place, and purpose of the hearing. A copy of the request or proposal shall be attached
4 to the notice. The court may order a modification if, at the hearing, the court finds
5 that the person proposing the modification has proved by clear and convincing
6 evidence that there has been a substantial change in circumstances and determines
7 that a modification would be in the best interests of the child. *ins 27-7*

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

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

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

19 (c) *Procedure.* Any interested person or other person approved by the court may
20 file a petition requesting a review of the conduct of a guardian, or the court, on its
21 own motion, may propose such a review. The request or motion shall allege facts
22 sufficient to show cause under par. (b) for the court to impose a remedy under par.
23 (d). The court shall hold a hearing on the request or motion not more than 30 days
24 after the filing of the request or proposal. Not less than 7 days before the date of the
25 hearing, the person requesting or proposing the review shall provide notice of the

1 hearing to the child, his or her parents, the guardian, and any other persons required
2 by the court. A copy of the request or motion shall be attached to the notice.

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

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

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

- 18 1. The guardianship is for a lesser period of time and that time has expired.
- 19 2. The child marries.
- 20 3. The child dies.
- 21 4. The child's residence changes from this state to another state and a guardian
22 is appointed in the new state of residence.
- 23 5. The guardian dies, or resigns and the resignation is accepted by the court,
24 and a successor guardian is not appointed.

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

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

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

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

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

17 3. If a hearing is to be held, by no less than 7 days before the date of the hearing,
18 the parent or child requesting the termination shall provide notice of the hearing to
19 the child, the child's parents, the guardian, and any other persons required by the
20 court. A copy of the petition shall be attached to the notice. The court shall terminate
21 the guardianship if the court finds that the petitioner has proven the allegations in
22 the petition under subd. 1. by a preponderance of the evidence.

23 **SECTION 20.** Subchapter XX of chapter 48 [precedes 48.98] of the statutes is
24 renumbered subchapter XXI of chapter 48 [precedes 48.98].

25 **SECTION 21.** 48.981 (7) (a) 11v. of the statutes is created to read:

1 48.981 (7) (a) 11v. A guardian ad litem for a child who is the subject of a
2 guardianship proceeding under s. 48.9795 to the extent necessary to fulfill the duties
3 and responsibilities required of the guardian ad litem under s. 48.9795 (3).

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

5 51.30 (4) (b) 18. a. In this subdivision, “abuse” has the meaning given in s. 51.62
6 (1) (ag); “neglect” has the meaning given in s. 51.62 (1) (br); and “parent” has the
7 meaning given in s. 48.02 (13), except that “parent” does not include the parent of a
8 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
9 or for whom a guardian is appointed under, ~~or~~ s. 48.9795 or 54.10 or s. 880.33, 2003
10 stats.

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

12 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed
13 under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with
14 developmental disability who has a parent or has a guardian appointed under s.
15 48.831 and does not have a guardian appointed under s. 48.9795 or 54.10 or s. 880.33,
16 2003 stats., information concerning the patient that is obtainable by staff members
17 of the agency or nonprofit corporation with which the agency has contracted is
18 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,
19 if any; the name, birth date and county of residence of the patient; information
20 regarding whether the patient was voluntarily admitted, involuntarily committed
21 or protectively placed and the date and place of admission, placement or
22 commitment; and the name, address and telephone number of the guardian of the
23 patient and the date and place of the guardian’s appointment or, if the patient is a
24 minor with developmental disability who has a parent or has a guardian appointed
25 under s. 48.831 and does not have a guardian appointed under s. 48.9795 or 54.10

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

3 **SECTION 24.** 54.01 (10) of the statutes is amended to read:

4 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to
5 manage the income and assets, ~~which may include, by court order, digital property,~~
6 ~~as defined in s. 711.03 (10),~~ and provide for the essential requirements for health and
7 safety and the personal needs of ~~a minor,~~ an individual found incompetent, or a
8 spendthrift or to manage the income and assets of a minor. A person's assets may
9 include, by court order, digital property, as defined in s. 711.03 (10).

10 **SECTION 25.** 54.10 (1) of the statutes is amended to read:

11 54.10 (1) A court may appoint ~~a guardian of the person or a guardian of the~~
12 ~~estate, or both,~~ for an individual if the court determines that the individual is a
13 minor. Except as provided in ss. 48.427, 48.831, 48.977, and 48.978, an appointment
14 of a guardian of the person of a minor shall be conducted under the procedures
15 specified in s. 48.9795.

16 **SECTION 26.** 54.15 (6) of the statutes is amended to read:

17 54.15 (6) TESTAMENTARY NOMINATION BY PROPOSED WARD'S PARENTS. Subject to the
18 rights of a surviving parent, a parent may by will nominate a guardian and successor
19 guardian of the ~~person or~~ estate for any of his or her minor children who is in need
20 of guardianship, unless the court finds that appointment of the guardian or successor
21 guardian is not in the minor's best interests. For an individual who is aged 18 or older
22 and is found to be in need of guardianship by reason of a developmental disability
23 or serious and persistent mental illness, a parent may by will nominate a
24 testamentary guardian. The parent may waive the requirement of a bond for such
25 an estate that is derived through a will.

1 **SECTION 27.** 54.25 (2) (d) 1. of the statutes is amended to read:

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

14 **SECTION 28.** 54.25 (2) (d) 2. o. of the statutes is amended to read:

15 54.25 (2) (d) 2. o. The power to have custody of the ward, if an adult, ~~and the~~
16 ~~power to have care, custody, and control of the ward, if a minor.~~

17 **SECTION 29.** 54.52 (1) of the statutes is amended to read:

18 54.52 (1) A person may at any time bring a petition for the appointment of a
19 standby guardian of the person or estate of an individual who is determined under
20 s. 54.10 to be incompetent, ~~a minor, or a spendthrift~~ or for the appointment of a
21 standby guardian of the estate of a minor, except that, as specified in s. 48.978 a
22 petition for the appointment of a standby guardian of the person or ~~property estate,~~
23 or both, of a minor to assume the duty and authority of guardianship on the
24 incapacity, death, or debilitation and consent, of the minor's parent may ~~may~~ shall be
25 brought under s. 48.978.

1 **SECTION 30.** 54.56 of the statutes is renumbered 48.9795 (12) and amended to
2 read:

3 **48.9795 (12) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS.** (a)

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

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

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

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

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

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

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

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

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

23 **SECTION 31.** 54.57 of the statutes is renumbered 48.9795 (13) and amended to
24 read:

1 48.9795 (13) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF A PARENT KILLS
2 OTHER PARENT. (a) Except as provided in sub. (2), in an action under this chapter that
3 affects a minor par. (b), a court may not grant to a parent of the minor a child who
4 is the subject of a proceeding under this section visitation or physical placement
5 rights with the minor child if the parent has been convicted under s. 940.01 of the
6 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
7 homicide, of the minor's child's other parent, and the conviction has not been
8 reversed, set aside, or vacated.

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

13 **SECTION 32.** 55.03 (1) of the statutes is amended to read:

14 55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting
15 as a guardian appointed under s. 48.9795 or ch. 54, 2017 stats., or ch. 880, 2003 stats.,
16 or ch. 54 may be a provider of protective services or protective placement for its ward
17 under this chapter.

18 **SECTION 33.** 115.76 (12) (b) 2. of the statutes is amended to read:

19 115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was
20 made a ward of the state, county, or child welfare agency under ch. 54, 2017 stats.,
21 or ch. 880, 2003 stats., or if a child has been placed in the legal custody or
22 guardianship of the state, county, or child welfare agency under ch. 48 or ch. 767.

23 **SECTION 34.** 118.125 (2) (L) of the statutes is amended to read:

24 118.125 (2) (L) A school board shall disclose the pupil records of a pupil in
25 compliance with a court order under s. 48.236 (4) (a), 48.345 (12) (b), 48.9795 (3) (d),

1 938.34 (7d) (b), 938.396 (1) (d), or 938.78 (2) (b) 2. after making a reasonable effort
2 to notify the pupil's parent or legal guardian.

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

4 146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62
5 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
6 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
7 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
8 or for whom a guardian is appointed under s. 48.9795 or 54.10 or s. 880.33, 2003 stats.

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

10 146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed
11 under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with
12 developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a
13 guardian appointed under s. 48.831 and does not have a guardian appointed under
14 s. 48.9795 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that
15 is obtainable by staff members of the agency or nonprofit corporation with which the
16 agency has contracted is limited, except as provided in subd. 9. e., to the nature of
17 an alleged rights violation, if any; the name, birth date and county of residence of the
18 patient; information regarding whether the patient was voluntarily admitted,
19 involuntarily committed or protectively placed and the date and place of admission,
20 placement or commitment; and the name, address and telephone number of the
21 guardian of the patient and the date and place of the guardian's appointment or, if
22 the patient is a minor with developmental disability who has a parent or has a
23 guardian appointed under s. 48.831 and does not have a guardian appointed under
24 s. 48.9795 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number
25 of the parent or guardian appointed under s. 48.831 of the patient.

1 **SECTION 37.** 757.69 (1) (g) 5. of the statutes is amended to read:

2 757.69 (1) (g) 5. Conduct uncontested proceedings under s. 48.13, 48.133,
3 48.9795, 938.12, 938.13, or 938.18.

4 **SECTION 38.** 808.075 (4) (a) 9m. of the statutes is created to read:

5 808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.9795 (10).

6 **SECTION 39.** 808.075 (4) (a) 11. of the statutes is amended to read:

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

9 **SECTION 40.** 808.075 (4) (a) 13. of the statutes is created to read:

10 808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.9795 (8).

11 **SECTION 41.** 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14.

12 and amended to read:

13 808.075 (4) (a) 14. Order for visitation under s. ~~54.56~~ 48.9795 (12).

14 **SECTION 42.** 814.66 (1) (m) of the statutes is renumbered 814.61 (13m) and
15 amended to read:

16 814.61 (13m) For filing a petition under s. ~~54.56~~ 48.9795 (12), whether in a
17 guardianship or temporary guardianship proceeding or to commence an
18 independent action, \$60.

19 **SECTION 43.** 938.345 (1) (e) of the statutes is amended to read:

20 938.345 (1) (e) Place any juvenile not found under ch. 880, 2003 stats., or ch.
21 46, 48, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to
22 be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively
23 treats one or more of those categories of juveniles.

24 **SECTION 44. Nonstatutory provisions.**

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37-13

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INS PREF

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Minor Guardianships. Generally, the bill creates a new process and standards for appointment of a guardian of a minor's person. A description of current law and a summary of the bill's key provisions are provided below.

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Introduction

Chapter 54, Stats., currently governs guardianships of the person, estate, or both of minors, as well as incompetent or spendthrift adults. Unlike certain, specialized minor guardianships under ch. 48, Stats., minor guardianships under ch. 54, Stats., do not require involvement by the child welfare system and therefore are informally referred to as "private" guardianships.

Under current law, a guardian of a minor's person has the authority to exercise care, custody, and control over the minor. The court may appoint either a temporary guardian, for a duration up to 60 days and one additional 60-day period, or a permanent guardian, with the appointment terminating only upon certain events specified by statute and case law.

Chapter 54, Stats., focuses primarily on incompetent and spendthrift adults, rendering many of the chapter's provisions inapplicable to minors. Current statutory law does not address certain issues relevant to minor guardianships, such as emergency situations and parental visitation.

Jurisdiction

The bill removes guardianships of a minor's person from ch. 54, Stats., and creates a new statute governing guardianships of a child's person in a new subchapter under ch. 48, Stats. This change transfers jurisdiction over private guardianships from the probate court under ch. 54, Stats., to the children's court under ch. 48, Stats. Under the bill, guardianships of a child's estate remain governed by ch. 54, Stats., but may be consolidated with actions under the new procedure.

The bill does not change the process or standard for appointment of a guardian in the specialized circumstances under ch. 48, Stats. The bill also specifies that a petition filed under the new statute may not seek to change preexisting orders entered in certain actions under chs. 48 and 938, Stats. If any such actions are pending, the bill requires the court to stay any subsequent proceedings under the new statute until the pending action is resolved, subject to certain exceptions. In addition, the bill prohibits a dispositional order under the new statute from changing the placement of a child under the supervision of a court in certain types of actions.

Types of Guardianship

The bill creates four types of guardianships of a child's person: full; limited; temporary; and emergency. The bill clarifies that a parent retains all rights and duties that are not assigned to the guardian or otherwise limited by statute or court order. For each type of guardian, the bill provides the following standards for and duties upon appointment:

A full guardianship requires a finding that the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or other compelling facts

and circumstances demonstrate that a full guardianship is necessary. Once appointed, the bill grants a full guardian the duties and authority granted to other guardians under ch. 48, Stats., as well as the following: the authority, subject to a court order, to determine reasonable visitation with the child; the right to change the child's residence from this state to another state; and the duty to report to the court immediately regarding any address changes and annually regarding the child's condition.

A limited guardianship requires a finding that the child's parents need assistance in providing for the care, custody, and control of the child. The court must specify the limited guardian's duties and authority, and may limit such authority to allow a parent to retain certain decision-making powers. If in the child's best interest, the court may also allow shared physical custody among the limited guardian and the parent.

A temporary guardianship requires a finding that the child's particular situation, including the inability of the child's parents to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian. A temporary guardian may be appointed for a period not to exceed 180 days, though the court may grant one additional 180-day period for good cause shown. In its order, the court must limit the temporary guardian's authority to those acts that are reasonably related to the reasons for the appointment.

An emergency guardianship requires a finding that the child's welfare requires the immediate appointment of an emergency guardian. The court may appoint an emergency guardian for a period not to exceed 60 days and must limit the emergency guardian's authority to those acts reasonably related to the reasons for the appointment.

Procedure for Full, Limited and Temporary Guardianships

Under the bill, any person, including a child 12 years of age or older, may petition for the appointment of a guardian for a child. The petition must contain certain information including the type of guardianship sought, the facts and circumstances establishing that a guardianship is needed, the name and address of a proposed guardian, and other information as specified in the bill. A parent or a child 12 years or older may also nominate a guardian under the bill. Under the bill, the court must appoint the person nominated as the guardian by the parent, unless the court finds that appointment of the person nominated is not in the child's best interest.

The bill requires that an initial hearing be held within 45 days after a petition is filed. At least 96 hours before the initial hearing, the proposed guardian must submit a report to the court as to his or her existing parental, guardianship, or custodial responsibilities and financial situation, and as to whether he or she is charged with or has been convicted of a crime or child abuse or neglect. Any interested person, as defined in the bill, may become a party to the hearing.

At the initial hearing, the court must first determine whether any party wishes to contest the petition. If the petition is not contested, the court must immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested and all parties consent, the court may proceed immediately to a fact-finding and dispositional hearing. If any party does not consent or if an adjournment is requested, the court must set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing.

At the fact-finding and dispositional hearing, any party may present evidence, including expert testimony, and argument relating to the allegations in the petition. The court must determine whether the petitioner has proven the allegations in the petition by clear and convincing evidence and must immediately proceed to determine the appropriate disposition.

The bill requires the court to consider all of the following factors in determining the appropriate disposition: 1) any nomination of a guardian made by a parent or the child, if 12 years of age or older, and the opinions of the parents and child as to what is in the child's best interests; 2) whether the proposed guardian would be fit, willing, and able to serve as the child's guardian; 3) if the child is an Indian child, the order of placement preference required for an Indian child in an Indian child custody proceeding, unless the court finds good cause for departing from that order; and 4) whether appointment of the proposed guardian is in the child's best interests.

Procedure for Emergency Guardianships

Under the bill, any person may petition for the appointment of an emergency guardian for a child. The petition must contain the same information required for a full, limited, or temporary guardianship, and must specify the reasons for the appointment of and the powers requested for an emergency guardian.

The bill requires the court to hold a hearing on an emergency petition as soon as possible after the filing of the petition or, for good cause shown, the court may issue a temporary order appointing an emergency guardian without a hearing, which remains in effect until a hearing is held. Any person who receives notice of the emergency guardianship petition under the bill has a right to a hearing for reconsideration or modification of an emergency guardianship.

Role of the Guardian ad Litem

Generally, the bill requires appointment of a guardian ad litem (GAL) in proceedings to appoint a guardian or terminate a guardianship, as well as in proceedings to modify a guardianship, if a hearing will be held.

In addition to the duties and responsibilities generally required of a GAL under ch. 48, Stats., the bill requires a GAL appointed under the new statute to conduct an investigation appropriate to the case, including: 1) meet with or observe the child; 2) assess the appropriateness and safety of the child's environment; 3) interview the child to determine the child's goal and concerns, if appropriate; 4) interview the proposed guardian; 5) visit the proposed guardian's home, if appropriate; and 6) report to the court concerning whether the proposed guardian is fit, willing, and able to serve.

The bill also requires the GAL to attend all court proceedings, present evidence concerning the child's best interest, make clear and specific recommendations to the court at every stage of the proceedings, and, upon request, report to the court concerning any matter related to the GAL's duties. Further, the bill requires the GAL to inspect certain reports and records relating to the child and, upon presentation of necessary releases, the child's family and the proposed guardian. The court must order custodians of the specified reports or records to permit inspection and copying of such reports or records by the GAL.

Post-Appointment Matters

The bill allows a court, on its own motion or upon the petition of any interested person, to appoint a successor guardian after a guardian has died, been removed, or resigned, or as a part of the original appointment or any time after, even while the current guardianship is still in place.

Under the bill, if the guardian abuses or neglects the child or knowingly permits others to do so, fails to disclose information that would have prevented his or her appointment as guardian, fails to follow or comply with the court's order, or otherwise fails to perform any of his or her duties as guardian, the court may exercise its continuing jurisdiction to impose certain remedies, including removal of the guardian and appointment of a successor guardian, modification of the duties and authority of the guardian, or entry of an order that may be necessary or appropriate to compel the

guardian to carry out the guardian's duties. The court may also require the guardian to pay any costs of the proceeding if the guardian's conduct was egregious. The bill requires the court to hold a hearing on a petition for the review of the conduct of a guardian within 30 days of the filing of the petition.

The bill authorizes a court to modify a guardianship order, if the court finds that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed modification is in the child's best interests.

Under the bill, a guardianship continues until the child attains the age of 18 years unless 1) the guardianship is for a lesser period of time and that time has expired; 2) the child marries; 3) the child dies; 4) the child's residence changes from this state to another state and a guardian is appointed in the new state of residence; 5) the guardian dies, or resigns and the resignation is approved by the court, and a successor guardian is not appointed; 6) the guardian is removed for cause and a successor guardian is not appointed; 7) the guardianship is terminated on the request of a parent or the child; or 8) the court terminates the guardianship upon the adoption of the child.

The bill also allows a parent or child to petition for termination of a guardianship. Specifically, the court must terminate the guardianship if it finds that the petitioner has shown by a preponderance of the evidence that a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is fit, willing, and able to carry out the duties of a guardian or that no compelling facts or circumstances exist demonstrating that a guardianship is necessary, and that termination of the guardianship would be in the best interests of the child.

INS 3-15

SECTION 1. 48.293 (2) of the statutes is amended to read:

~~48.293 (2)~~ All records relating to a child, or to an unborn child and the unborn child's expectant mother, that are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party and to inspection by the court-appointed special advocate for the child, upon demand and upon presentation of releases when necessary, at least 48 hours before the proceeding. Persons entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel, a guardian ad litem, or a court-appointed special advocate not to disclose specified items in the materials to the child or the parent, or to the expectant mother, if the court reasonably believes

that the disclosure would be harmful to the interests of the child or the unborn child.

This subsection does not apply to a guardianship proceeding under s. 48.9795.

History: 1977 c. 354; 1985 a. 262; 1989 a. 121; 1993 a. 16; 1995 a. 77, 275; 1997 a. 292; 1999 a. 149; 2005 a. 42; 2013 a. 170.

Judicial Council Note, 1985: Sub. (3) makes videotaped oral statements of children in the possession, custody or control of the state discoverable upon demand by the child, child's counsel or guardian ad litem. These statements may be admissible under s. 908.08, stats. [85 Act 262]

INS 13-6

The court shall appoint a guardian ad litem when it determines that a hearing for modification is to be held under sub. (9) (b). In a case that is contested, the guardian ad litem may file a motion pursuant to s. 48.235 (8) (b).

INS 27-7

An order for modification under this subsection may not change the placement of a child under the supervision of a court pursuant to s. 48.13, 48.133, or ch. 938, other than to modify a guardianship order entered under this section.

Insert
37-13

SECTION 2. 809.30 (1) (a) of the statutes is amended to read:

809.30 (1) (a) "Final adjudication" means the entry of a final judgment or order by the circuit court in a s. 971.17 proceeding, in a criminal case, or in a ch. 48, 51, 55, 938, or 980 case, other than a termination of parental rights case under s. 48.43, a guardianship proceeding under s. 48.9795, or a parental consent to abortion case under s. 48.375 (7).

or 48.14

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 112 Wis. 2d xvii (1985); Sup. Ct. Order, 123 Wis. 2d xi (1985); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93-19, 179 Wis. 2d xxiii (1994); 1993 a. 16, 395, 451; 1995 a. 77; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 264, 434; 2007 a. 20; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09; 2009 a. 26, 28, 180, 276; 2011 a. 38; 2017 a. 184, 359; s. 13.92 (2) (i); s. 35.17 correction in (2) (d).

Judicial Council Committee's Note, 1978: Many changes are made in prior practice in criminal cases and in protective placement, juvenile and mental commitment cases. Under the former procedure counsel, usually the State Public Defender appointed by the Supreme Court, was required to order a transcript, wait for its preparation, review it, present to the trial court by a post-trial motion any issues which the defendant desired to raise on appeal even if the issue had been presented to and decided by the court during the trial. [see State v. Charette, 51 Wis. 2d 531, 187 N.W.2d 203 (1971) and State v. Wuensch, 69 Wis. 2d 467, 230 N.W.2d 665 (1975)], and after the court ruled on the motion, appeal both the original conviction and the denial of the post-trial motion to the Supreme Court. Often a year or more elapsed between the sentencing of the defendant and the docketing of his appeal in the Supreme Court. This delay, combined with the delay in the Supreme Court caused by its backlog, often resulted in an appeal not being decided by the Supreme Court until two or three years after conviction.

The procedures in this section are designed to expedite the entire process by putting time limits on each step and by eliminating the necessity of each issue being presented twice to the trial court.

The term "postconviction relief", as used in this Rule, includes new trial, reduction of sentence and any other type of relief which the trial court is authorized to give, other than under s. 974.06.

Extensions of time for taking various steps under this section can be granted by the court of appeals under Rule 809.82. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) (h) is amended to increase from 10 to 20 days the period for a defendant to file a notice of appeal after entry of a trial court's order denying postconviction relief. It is sometimes difficult to meet the present 10-day requirement for filing an appeal under this subsection due to the delays that may

occur in the prompt delivery by mail of the order of the trial court on a motion for postconviction relief. Increasing the time period by 10 days does not unduly lengthen the appellate process for determination of an appeal on its merits. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (1) (e) is amended to increase from 40 to 60 days the period for the court reporter to complete and serve a copy of the transcript on the defendant and sub. (1) (f) is amended to increase from 30 to 60 days the period for the defendant to either file a notice of appeal or motion seeking postconviction relief. The previous time periods were often insufficient for preparation of the transcript and for review of the transcript and record by the defendant determining which, if any, postconviction proceedings to commence.

Sub. (1) (e) is clarified to establish that the original of the transcript is filed with the trial court by the court reporter whereas a copy is served by the court reporter on the defendant. Also, the transcript of postconviction proceedings must be filed and served by the court reporter within 20 days of ordering by the defendant.

Sub. (1) (i) is amended to provide that the clerk of the trial court shall transmit the record to the court of appeals no later than 40 days after the filing of the notice of appeal. Presently transmittal of the record is governed by Rule 809.15 (4) which allows up to 90 days from the filing of the notice of appeal.

The total time period from ordering the transcript to transmittal of the record to the court of appeals has not been altered by these amendments.

Judicial Council Committee's Note, 1978, explained that extensions of time for taking various steps under Rule 809.30 can be granted by the court of appeals under Rule 809.82. In *State v. Rembert*, 99 Wis. 2d 401, 299 N.W.2d 292 (Ct. App. 1980), the court of appeals stated that its authority to extend the time periods of Rule 809.30 is to the exclusion of the trial court. The court of appeals, not the trial court, is responsible for monitoring, enforcing or extending the time periods of Rule 809.30. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 1984: Requiring that the appellate process be initiated by filing a notice in the trial court within 20 days after sentencing is intended to:

Expedite the process; the information needed for a decision regarding postconviction relief is available to the defendant at sentencing and the decision can usually be made shortly thereafter.

Emphasize trial counsel's duties to counsel the defendant about the decision to seek postconviction relief and to continue representation until appellate counsel is retained or appointed. SCR 20.34 (2) (d); *Whitmore v. State*, 56 Wis. 2d 706, 203 N.W.2d 56 (1973).

Create a record in the trial court showing whether the postconviction process has been timely invoked.

Notify the judge, clerk, court reporter and district attorney that postconviction relief is contemplated and allow the district attorney to request a redetermination of indigency in public defender cases.

Give the public defender the information needed to appoint counsel and order transcripts promptly, and to decide whether the defendant's indigency must first be determined or redetermined. [Re order effective July 1, 1985]

Judicial Council Note, 1986: Sub. (1) is amended to clarify the application of the statute when the appeal is taken from the final judgment or order in a non-criminal case.

Judicial Council Note, 2001: Subtitles have been added. Subsection (2) (e) was revised to amend the time for appointing appellate counsel and to clarify that a defendant represented by appointed counsel must request a copy of the circuit court case record from the circuit court. Subsection (2) (f) was amended to clarify that a defendant not represented by the state public defender may request a copy of the circuit court case record from the circuit court. The second sentence of sub. (2) (f) sets a time limit for a defendant who has unsuccessfully sought public defender representation under sub. (2) (e) to request the transcripts and circuit court case record. Subsection (2) (g) was amended to require the circuit court clerk to send the circuit court case record to the defendant within 60 days after receipt of the request. Subsection (2) (h) was revised to require the defendant to file the notice of appeal either within 60 days after service of the last transcript or the circuit court case record, whichever occurs later. The second sentence of sub. (2) (h) specifies that a notice of motion shall not be filed with a s. 809.30 postconviction motion. If the circuit court grants a hearing on the motion, the circuit court will notify the parties of the date.

The first clause of sub. (2) (i) specifies that an extension may be granted by the court of appeals.

Subsection (3) was revised to clarify that it applies in all appeals utilizing s. 809.30, including cases under chs. 48, 51, 55, and 938.

Subsection (4) establishes a procedure for making and determining motions to withdraw by appointed counsel. This rule does not change existing law concerning when a withdrawal motion is necessary. See e.g. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 622-24, 516 N.W.2d 362 (1994).

Often motions to withdraw are the result of a disagreement between appointed counsel and the defendant, sometimes inaccurately called a "conflict," about the existence of a meritorious issue for appeal, or about the manner in which any such issue should be raised. It is counsel's duty to decide what issues in a case have merit for an appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). Postconviction counsel is entitled to exercise reasonable professional judgment in winnowing out even arguable issues in favor of others perceived to be stronger. *Id.* Counsel's failure to raise an issue on direct appeal may prevent the defendant from raising it in a subsequent s. 974.06 collateral review proceeding, absent "sufficient reason." *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

The rules of appellate procedure require that a defendant choose whether to proceed with the assistance of appointed counsel or proceed *pro se*. *State v. Redmond*, 203 Wis. 2d 13, 552 N.W.2d 115 (Ct. App. 1996). A defendant has neither the right to appointed counsel of choice nor the right to insist that a particular issue be raised. *Oimen v. McCaughy*, 130 F.2d 809 (7th Cir. 1997). "The defendant may terminate appellate counsel's representation and proceed *pro se* or the defendant may allow postconviction relief to continue based on counsel's brief and then seek relief on the grounds of ineffective assistance of appellate counsel." *State v. Debra A.E.*, 188 Wis. 2d 111, 137-39, 523 N.W.2d 727 (1994). On ineffective assistance of appellate counsel claims, the court will determine whether counsel's choice of issues met the objective standard of reasonableness. *Gray v. Greer*, 778 F.2d 350 (7th Cir. 1985).

The state public defender will not appoint successor counsel where a defendant disagrees with the legal conclusions of appointed counsel or when a defendant wants a second opinion as to the merits of an appeal. To do so would unduly delay the disposition of the appeal, and would be contrary to the interests of justice. Wis. Admin. Code s. PD 2.04.

If a defendant elects to waive counsel and proceed *pro se*, the court must find that the defendant has been provided with clear warnings with respect to forfeiture of the right to counsel and the dangers of self-representation. *State v. Cummings*, 199 Wis. 2d 721, 546 N.W.2d 406 (1996). [Re Order No. 00-02 effective July 1, 2001]

Judicial Council Note, 2002: The terminology throughout s. 809.30 is amended to clarify that persons seeking to appeal final judgments or orders in criminal, ch. 48 (child or unborn child in need of protection or services, guardianship or adoption), ch. 51 (civil commitment), ch. 55 (protective placement), and ch. 938 (delinquency or juvenile justice) cases must comply with this rule. Prior language referred to all such persons as defendants and to all appeal proceedings as "postconviction," and was confusing to parties and practitioners.

Amended sub. (2) (h) provides a cross-reference to the statutory section governing the requirements of a notice of appeal. The requirement of a motion for postconviction or postdisposition relief on grounds other than sufficiency of the evidence or issues previously raised is consistent with s. 974.02 (2).

Prior to 2001 WI 39, effective 7/1/01, this rule did not specify who could request an extension of time for a circuit court to decide a postconviction motion. Sub. (2) (i) is amended to permit the circuit court, the state, the defendant, or any other party to request an extension of time for the circuit court to decide a postconviction or postdisposition motion.

Subsection (2) (j) is amended for clarification and consistency, and to cross-reference s. 809.10, which contains the requirements governing a notice of appeal. In a criminal case, the prosecutor who represented the state in the circuit court should be served with a copy of the notice of appeal.

The amendment to sub. (4) (a) clarifies that the rule requiring service on the state public defender appellate division is applicable only to postconviction, postdisposition, and appellate appointments. Rule 809.30 (4), 2001 WI 39, effective 7/1/01, is designed to assure that courts acting on motions to withdraw have knowledge of the state public defender's position with respect to appointing successor counsel. Subsection (4) (a) is amended to reflect that withdrawal motions filed by state public defender staff attorneys already contain that information and that the issue of appointment of successor counsel is irrelevant to the court's determination when a no-merit report is filed. [Re Order No. 02-01 effective January 1, 2003]

NOTE: Sup. Ct. Order No. 04-08, 2008 WI 108, states, "The Judicial Council Committee Comments are not adopted, but will be published and may be consulted for guidance in interpreting and applying Wis. Stat. ss. 809.30, 809.32 and 809.62."

Judicial Council Committee Comment, July 2008: The amendment to s. 809.30 (2) (b) allows a notice of intent that is filed too early to be deemed filed on the date that a judgment and sentence or other final adjudication is filed. This is consistent with the procedure applicable to civil appeals under s. 808.04 (8). [Re Order No. 08-04 effective January 1, 2009]

SECTION 3. 809.30 (1) (b) 2. of the statutes is amended to read:

✗ 809.30 (1) (b) 2. A party, other than the state, seeking postdisposition relief in a case under ch. 48, other than a termination of parental rights case under s. 48.43,

a guardianship proceeding under s. 48.9795, or a parental consent to abortion case
under s. 48.375 (7).

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 112 Wis. 2d xvii (1985); Sup. Ct. Order, 123 Wis. 2d xi (1985); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93-19, 179 Wis. 2d xxiii (1994); 1993 a. 16, 395, 451; 1995 a. 77; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 264, 434; 2007 a. 20; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09; 2009 a. 26, 28, 180, 276; 2011 a. 38; 2017 a. 184, 359; s. 13.92 (2) (i); s. 35.17 correction in (2) (d).

Judicial Council Committee's Note, 1978: Many changes are made in prior practice in criminal cases and in protective placement, juvenile and mental commitment cases. Under the former procedure counsel, usually the State Public Defender appointed by the Supreme Court, was required to order a transcript, wait for its preparation, review it, present to the trial court by a post-trial motion any issues which the defendant desired to raise on appeal even if the issue had been presented to and decided by the court during the trial, [see *State v. Charette*, 51 Wis. 2d 531, 187 N.W.2d 203 (1971) and *State v. Wuensch*, 69 Wis. 2d 467, 230 N.W.2d 665 (1975)], and after the court ruled on the motion, appeal both the original conviction and the denial of the post-trial motion to the Supreme Court. Often a year or more elapsed between the sentencing of the defendant and the docketing of his appeal in the Supreme Court. This delay, combined with the delay in the Supreme Court caused by its backlog, often resulted in an appeal not being decided by the Supreme Court until two or three years after conviction.

The procedures in this section are designed to expedite the entire process by putting time limits on each step and by eliminating the necessity of each issue being presented twice to the trial court.

The term "postconviction relief", as used in this Rule, includes new trial, reduction of sentence and any other type of relief which the trial court is authorized to give, other than under s. 974.06.

Extensions of time for taking various steps under this section can be granted by the court of appeals under Rule 809.82. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) (h) is amended to increase from 10 to 20 days the period for a defendant to file a notice of appeal after entry of a trial court's order denying postconviction relief. It is sometimes difficult to meet the present 10-day requirement for filing an appeal under this subsection due to the delays that may occur in the prompt delivery by mail of the order of the trial court on a motion for postconviction relief. Increasing the time period by 10 days does not unduly lengthen the appellate process for determination of an appeal on its merits. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (1) (e) is amended to increase from 40 to 60 days the period for the court reporter to complete and serve a copy of the transcript on the defendant and sub. (1) (f) is amended to increase from 30 to 60 days the period for the defendant to either file a notice of appeal or motion seeking postconviction relief. The previous time periods were often insufficient for preparation of the transcript and for review of the transcript and record by the defendant determining which, if any, postconviction proceedings to commence.

Sub. (1) (e) is clarified to establish that the original of the transcript is filed with the trial court by the court reporter whereas a copy is served by the court reporter on the defendant. Also, the transcript of postconviction proceedings must be filed and served by the court reporter within 20 days of ordering by the defendant.

Sub. (1) (i) is amended to provide that the clerk of the trial court shall transmit the record to the court of appeals no later than 40 days after the filing of the notice of appeal. Presently transmittal of the record is governed by Rule 809.15 (4) which allows up to 90 days from the filing of the notice of appeal.

The total time period from ordering the transcript to transmittal of the record to the court of appeals has not been altered by these amendments.

Judicial Council Committee's Note, 1978, explained that extensions of time for taking various steps under Rule 809.30 can be granted by the court of appeals under Rule 809.82. In *State v. Rembert*, 99 Wis. 2d 401, 299 N.W.2d 292 (Ct. App. 1980), the court of appeals stated that its authority to extend the time periods of Rule 809.30 is to the exclusion of the trial court. The court of appeals, not the trial court, is responsible for monitoring, enforcing or extending the time periods of Rule 809.30. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 1984: Requiring that the appellate process be initiated by filing a notice in the trial court within 20 days after sentencing is intended to:

Expedite the process; the information needed for a decision regarding postconviction relief is available to the defendant at sentencing and the decision can usually be made shortly thereafter.

Emphasize trial counsel's duties to counsel the defendant about the decision to seek postconviction relief and to continue representation until appellate counsel is retained or appointed. SCR 20.34 (2) (d); *Whitmore v. State*, 56 Wis. 2d 706, 203 N.W.2d 56 (1973).

Create a record in the trial court showing whether the postconviction process has been timely invoked.

Notify the judge, clerk, court reporter and district attorney that postconviction relief is contemplated and allow the district attorney to request a redetermination of indigency in public defender cases.

Give the public defender the information needed to appoint counsel and order transcripts promptly, and to decide whether the defendant's indigency must first be determined or redetermined. [Re order effective July 1, 1985]

Judicial Council Note, 1986: Sub. (1) is amended to clarify the application of the statute when the appeal is taken from the final judgment or order in a non-criminal case.

Judicial Council Note, 2001: Subtitles have been added. Subsection (2) (e) was revised to amend the time for appointing appellate counsel and to clarify that a defendant represented by appointed counsel must request a copy of the circuit court case record from the circuit court. Subsection (2) (f) was amended to clarify that a defendant not represented by the state public defender may request a copy of the circuit court case record from the circuit court. The second sentence of sub. (2) (f) sets a time limit for a defendant who has unsuccessfully sought public defender representation under sub. (2) (e) to request the transcripts and circuit court case record. Subsection (2) (g) was amended to require the circuit court clerk to send the circuit court case record to the defendant within 60 days after receipt of the request. Subsection (2) (h) was revised to require the defendant to file the notice of appeal either within 60 days after service of the last transcript or the circuit court case record, whichever occurs later. The second sentence of sub. (2) (h) specifies that a notice of motion shall not be filed with a s. 809.30 postconviction motion. If the circuit court grants a hearing on the motion, the circuit court will notify the parties of the date.

The first clause of sub. (2) (i) specifies that an extension may be granted by the court of appeals.

Subsection (3) was revised to clarify that it applies in all appeals utilizing s. 809.30, including cases under chs. 48, 51, 55, and 938.

Subsection (4) establishes a procedure for making and determining motions to withdraw by appointed counsel. This rule does not change existing law concerning when a withdrawal motion is necessary. See e.g. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 622-24, 516 N.W.2d 362 (1994).

Often motions to withdraw are the result of a disagreement between appointed counsel and the defendant, sometimes inaccurately called a "conflict," about the existence of a meritorious issue for appeal, or about the manner in which any such issue should be raised. It is counsel's duty to decide what issues in a case have merit for an appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). Postconviction counsel is entitled to exercise reasonable professional judgment in winnowing out even arguable issues in favor of others perceived to be stronger. *Id.* Counsel's failure to raise an issue on direct appeal may prevent the defendant from raising it in a subsequent s. 974.06 collateral review proceeding, absent "sufficient reason." *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

The rules of appellate procedure require that a defendant choose whether to proceed with the assistance of appointed counsel or proceed *pro se*. *State v. Redmond*, 203 Wis. 2d 13, 552 N.W.2d 115 (Ct. App. 1996). A defendant has neither the right to appointed counsel of choice nor the right to insist that a particular issue be raised. *Oimen v. McCaughtry*, 130 F.2d 809 (7th Cir. 1997). "The defendant may terminate appellate counsel's representation and proceed *pro se* or the defendant may allow postconviction relief to continue based on counsel's brief and then seek relief on the grounds of ineffective assistance of appellate counsel." *State v. Debra A.E.*, 188 Wis. 2d 111, 137-39, 523 N.W.2d 727 (1994). On ineffective assistance of appellate counsel claims, the court will determine whether counsel's choice of issues met the objective standard of reasonableness. *Gray v. Greer*, 778 F.2d 350 (7th Cir. 1985).

The state public defender will not appoint successor counsel where a defendant disagrees with the legal conclusions of appointed counsel or when a defendant wants a second opinion as to the merits of an appeal. To do so would unduly delay the disposition of the appeal, and would be contrary to the interests of justice. Wis. Admin. Code s. PD 2.04.

If a defendant elects to waive counsel and proceed *pro se*, the court must find that the defendant has been provided with clear warnings with respect to forfeiture of the right to counsel and the dangers of self-representation. *State v. Cummings*, 199 Wis. 2d 721, 546 N.W.2d 406 (1996). [Re Order No. 00-02 effective July 1, 2001]

Judicial Council Note, 2002: The terminology throughout s. 809.30 is amended to clarify that persons seeking to appeal final judgments or orders in criminal, ch. 48 (child or unborn child in need of protection or services, guardianship or adoption), ch. 51 (civil commitment), ch. 55 (protective placement), and ch. 938 (delinquency or juvenile justice) cases must comply with this rule. Prior language referred to all such persons as defendants and to all appeal proceedings as "postconviction," and was confusing to parties and practitioners.

Amended sub. (2) (h) provides a cross-reference to the statutory section governing the requirements of a notice of appeal. The requirement of a motion for postconviction or postdisposition relief on grounds other than sufficiency of the evidence or issues previously raised is consistent with s. 974.02 (2).

Prior to 2001 WI 39, effective 7/1/01, this rule did not specify who could request an extension of time for a circuit court to decide a postconviction motion. Sub. (2) (i) is amended to permit the circuit court, the state, the defendant, or any other party to request an extension of time for the circuit court to decide a postconviction or postdisposition motion.

Subsection (2) (j) is amended for clarification and consistency, and to cross-reference s. 809.10, which contains the requirements governing a notice of appeal. In a criminal case, the prosecutor who represented the state in the circuit court should be served with a copy of the notice of appeal.

The amendment to sub. (4) (a) clarifies that the rule requiring service on the state public defender appellate division is applicable only to postconviction, postdisposition, and appellate appointments. Rule 809.30 (4). 2001 WI 39, effective 7/1/01, is designed to assure that courts acting on motions to withdraw have knowledge of the state public defender's position with respect to appointing successor counsel. Subsection (4) (a) is amended to reflect that withdrawal motions filed by state public defender staff attorneys already contain that information and that the issue of appointment of successor counsel is irrelevant to the court's determination when a no-merit report is filed. [Re Order No. 02-01 effective January 1, 2003]

NOTE: Sup. Ct. Order No. 04-08, 2008 WI 108, states, "The Judicial Council Committee Comments are not adopted, but will be published and may be consulted for guidance in interpreting and applying Wis. Stat. ss. 809.30, 809.32 and 809.62."

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SECTION 4. 809.30 (2) (a) of the statutes is amended to read:

× **809.30 (2) (a) *Appeal procedure; counsel to continue.*** A person seeking postconviction relief in a criminal case; a person seeking postdisposition relief in a case under ch. 48 other than a termination of parental rights case under s. 48.43, a guardianship proceeding under s. 48.9795, or a parental consent to abortion case under s. 48.375 (7); or a person seeking postdisposition relief in a s. 971.17 proceeding or in a case under ch. 51, 55, 938, or 980 shall comply with this section. Counsel representing the person at sentencing or at the time of the final adjudication shall continue representation by filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition relief unless counsel is discharged by the person or allowed to withdraw by the circuit court before the notice must be filed.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 112 Wis. 2d xviii (1985); Sup. Ct. Order, 123 Wis. 2d xi (1985); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93-19, 179 Wis. 2d xxiii (1994); 1993 a. 16, 395, 451; 1995 a. 77; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 264, 434; 2007 a. 20; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09; 2009 a. 26, 28, 180, 276; 2011 a. 38; 2017 a. 184, 359; s. 13.92 (2) (i); s. 35.17 correction in (2) (d).

Judicial Council Committee's Note, 1978: Many changes are made in prior practice in criminal cases and in protective placement, juvenile and mental commitment cases. Under the former procedure counsel, usually the State Public Defender appointed by the Supreme Court, was required to order a transcript, wait for its preparation, review it, present to the trial court by a post-trial motion any issues which the defendant desired to raise on appeal even if the issue had been presented to and decided by the court during the trial. [see *State v. Charette*, 51 Wis. 2d 531, 187 N.W.2d 203 (1971) and *State v. Wuensch*, 69 Wis. 2d 467, 230 N.W.2d 665 (1975)]. and after the court ruled on the motion, appeal both the original conviction and the denial of the post-trial motion to the Supreme Court. Often a year or more elapsed between the sentencing of the defendant and the docketing of his appeal in the Supreme Court. This delay, combined with the delay in the Supreme Court caused by its backlog, often resulted in an appeal not being decided by the Supreme Court until two or three years after conviction.

The procedures in this section are designed to expedite the entire process by putting time limits on each step and by eliminating the necessity of each issue being presented twice to the trial court.

The term "postconviction relief", as used in this Rule, includes new trial, reduction of sentence and any other type of relief which the trial court is authorized to give, other than under s. 974.06.

Extensions of time for taking various steps under this section can be granted by the court of appeals under Rule 809.82. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) (b) is amended to increase from 10 to 20 days the period for a defendant to file a notice of appeal after entry of a trial court's order denying postconviction relief. It is sometimes difficult to meet the present 10-day requirement for filing an appeal under this subsection due to the delays that may occur in the prompt delivery by mail of the order of the trial court on a motion for postconviction relief. Increasing the time period by 10 days does not unduly lengthen the appellate process for determination of an appeal on its merits. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (1) (e) is amended to increase from 40 to 60 days the period for the court reporter to complete and serve a copy of the transcript on the defendant and sub. (1) (f) is amended to increase from 30 to 60 days the period for the defendant to either file a notice of appeal or motion seeking postconviction relief. The previous time periods were often insufficient for preparation of the transcript and for review of the transcript and record by the defendant determining which, if any, postconviction proceedings to commence.

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Emphasize trial counsel's duties to counsel the defendant about the decision to seek postconviction relief and to continue representation until appellate counsel is retained or appointed. SCR 20.34 (2) (d); *Whitmore v. State*, 56 Wis. 2d 706, 203 N.W.2d 56 (1973).

Create a record in the trial court showing whether the postconviction process has been timely invoked.

Notify the judge, clerk, court reporter and district attorney that postconviction relief is contemplated and allow the district attorney to request a redetermination of indigency in public defender cases.

Give the public defender the information needed to appoint counsel and order transcripts promptly, and to decide whether the defendant's indigency must first be determined or redetermined. [Re order effective July 1, 1985]

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The first clause of sub. (2) (i) specifies that an extension may be granted by the court of appeals.

Subsection (3) was revised to clarify that it applies in all appeals utilizing s. 809.30, including cases under chs. 48, 51, 55, and 938.

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Often motions to withdraw are the result of a disagreement between appointed counsel and the defendant, sometimes inaccurately called a "conflict," about the existence of a meritorious issue for appeal, or about the manner in which any such issue should be raised. It is counsel's duty to decide what issues in a case have merit for an appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). Postconviction counsel is entitled to exercise reasonable professional judgment in winnowing out even arguable issues in favor of others perceived to be stronger. *Id.* Counsel's failure to raise an issue on direct appeal may prevent the defendant from raising it in a subsequent s. 974.06 collateral review proceeding, absent "sufficient reason." *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

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LRB-0241/P4ins2
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INS 5-18

SECTION 1. 48.465 (3) of the statutes is amended to read:

~~X~~48.465 (3) EXCEPTIONS. This section does not apply to a termination of parental rights case under s. 48.43 ~~or~~, to a parental consent to abortion case under s. 48.375 (7), or to a guardianship proceeding under s. 48.9795.

History: 2009 a. 26.

Wheeler, Elizabeth

From: Otis, Amber
Sent: Friday, November 30, 2018 11:01 AM
To: Wheeler, Elizabeth
Cc: McCarthy, Steven
Subject: LRB-0241 - Minor guardianships

Hi, Elizabeth.

Here are the last changes to LRB-0241. At its meeting yesterday, the study committee voted unanimously to approve the draft, with these changes included, for introduction by the Joint Legislative Council.

- Page 16, line 20: create a paragraph (a) by changing (3) (intro) to (3) (a). ✓
- Page 17, line 1: delete the material starting with "In addition" and ending with "request" on page 17, line 19, and insert a new sub. (3) (b) with the following text:

"The guardian ad litem has the duties and responsibilities required under s. 48.235 (3) (a). The guardian ad litem represents the best interests of the child throughout the proceedings but must apply in all court proceedings the applicable standard under sub. (4) (b) 4., 5., 6., or 7. The guardian ad litem shall conduct a diligent investigation sufficient to represent the best interests of the child in court. As appropriate to the circumstances, the investigation may include, personally or through a trained designee, meeting with or observing the child, meeting with any proposed guardian, meeting with interested persons, and visiting the homes of the child and the proposed guardian. The guardian ad litem shall attend all court proceedings relating to the guardianship, present evidence concerning the best interest of the child, if necessary, and make clear and specific recommendations to the court at every stage of the proceedings."

- Page 17, line 20: renumber sub. (3) (d) to (3) (c). ✓
- Page 18, line 6: delete the last sentence of that paragraph (starting with "A guardian ad litem" and ending with "proceedings" on page 18, line 9). ✓
- Page 27, line 5: delete the material starting with "The guardian ad litem" and ending with "hearing" on line 10, and insert:

"The guardian ad litem shall conduct a diligent investigation sufficient to represent the best interests of the child in court. If the court appoints a guardian ad litem after entry of the order granting the emergency guardianship, the guardian ad litem may petition for reconsideration or modification of the emergency guardianship under subd. 5. If the court dismisses the petition for emergency guardianship prior to appointing a guardian ad litem, the court need not appoint a guardian ad litem unless the petition is refiled."

- In the prefatory note, replace the section titled "Role of the Guardian ad Litem" with the following text:

"Generally, the bill requires appointment of a guardian ad litem (GAL) in proceedings to appoint a guardian or terminate a guardianship, as well as in proceedings to modify a guardianship, if a hearing will be held.

The GAL represents the best interests of the child throughout the proceedings but must apply in all court proceedings the applicable standard specified in the bill. In addition to certain specific duties and responsibilities required of a GAL under ch. 48, Stats., the GAL must conduct a diligent investigation sufficient to represent the

best interests of the child in court. As appropriate to the circumstances, this investigation may include, personally or through a trained designee, meeting with or observing the child, meeting with any proposed guardian, meeting with interested persons, and visiting the homes of the child and the proposed guardian.

The GAL is required to attend all court proceedings relating to the guardianship, present evidence concerning the best interest of the child, if necessary, and make clear and specific recommendations to the court at every stage of the proceedings. Further, the bill requires the GAL to inspect certain reports and records relating to the child and, upon presentation of necessary releases, the child's family and the proposed guardian. The court must order custodians of the specified reports or records to permit inspection and copying of such reports or records by the GAL."

As always, give me a call with any questions or issues. Otherwise, please feel free to send over the /2 as your schedule allows – no rush. Thank you again for all of your help over the interim!

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