

CHAPTER 48

CHILDREN'S CODE

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GENERAL PROVISIONS

48.01 Title, intent and construction of chapter. (1) **TITLE.** This chapter may be cited as "The Children's Code".

(2) **INTENT.** It is declared to be the intent of this chapter to promote the best interests of the children of this state through:

(a) Juvenile courts adequately equipped to review each case on its individual merits under procedures designed to safeguard the legal rights of the child and his parents;

(b) An integrated and co-ordinated program for all delinquent, neglected and dependent children both in their own community and while in the custody of the state;

(c) Protection of children from unnecessary separation, either temporary or permanent, from their parents;

(d) Adequate care and rehabilitation for all children who must be separated from their parents temporarily for the child's protection or that of the public;

(e) Co-ordinated planning to assist local communities in promoting effective programs in health, education, recreation and welfare for the maximum development of all children and for the control of influences detrimental to youth;

(f) Assurance for children needing adoptive homes that they will be placed in the best home available; protection of children from adoption by persons unfit to have responsibility for raising a child; protection for children who are legally established in adoptive homes from interference by their natural parents.

(3) **CONSTRUCTION.** This chapter shall be liberally construed to effect the objectives in sub. (2). The best interests of the child shall always be of paramount consideration, but the court shall also consider the interest of the parents or guardian of the child and the interest of the public.

Meaning of "best interests of the child" discussed. Adoption of Tachick, 60 W (2d) 540, 210 NW (2d) 865

The best interests of a child abandoned by its father prior to its birth require affirmance of the county court order terminating the father's parental rights. State ex rel. Lewis v. Lutheran Social Services, 68 W (2d) 36, 227 NW (2d) 643.

A juvenile court in the disposition of a case subsequent to an adjudication of delinquency, must consider not only the paramount factor of the child's best interests but also the interest of the parents or guardian and the interest of the public. In re Interest of J. K. (a minor), 68 W (2d) 426, 228 NW (2d) 713.

48.02 Definitions: In this chapter the following words and phrases have the designated meanings:

(1) "Agency" unless qualified includes the department, county agencies and licensed child welfare agencies.

(2) "Court" means the juvenile court unless otherwise specified in the section, except that in ss. 48.81 to 48.97, relating to adoptions, "court" means the county court.

(3) "Child" means a person under 18 years of age.

(4) "Child welfare agency" means any person required to be licensed by s. 48.60.

(5) "Day care center" means any facility operated by a person required to be licensed by s. 48.65.

(6) "Department" means the department of health and social services unless otherwise specified in the section.

(7) "Foster home" means any facility operated by a person required to be licensed by s. 48.62.

(8) "Guardian ad litem" means a person appointed to protect the interest of a minor or an incompetent in a particular court proceeding. He has none of the rights of a general guardian. He shall be an attorney admitted to practice in this state, shall be appointed in the manner provided for appointment of guardians ad litem in county court, and shall be allowed reasonable compensation to be paid by the county in which the proceeding is held, on order of the court.

(9) "Guardian" means guardian of the person and refers to the person having the right to make major decisions affecting a child including the right to consent to marriage, to enlistment in the armed forces, to major surgery and to adoption or to making recommendations as to adoption as hereinafter set forth in this chapter. The guardian has legal custody of the child unless legal custody is given by the court to another person. A person may be appointed guardian of a child or removed as such guardian only by court action under the provisions of the chapter under which such guardian was appointed. Where a guardian has been appointed and is acting as guardian for a child under this chapter, no guardian of the person of such child shall be appointed under ch. 880.

(10) "Legal custody" means the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education and discipline for a

child. Legal custody may be taken from a parent only by court action.

(11) "Parent" means either a natural parent or a parent by adoption. If the child is born out of wedlock but not subsequently legitimated or adopted, "parent" means the natural mother and a person adjudged in a court proceeding to be the natural father.

(12) "Relative" means a parent, grandparent, brother, sister, uncle or aunt. This relationship may be by consanguinity or direct affinity.

(13) "Shelter care facility" means a non-secure place of care and custody for those juveniles who, in the opinion of the juvenile judge, can be cared for in such facility.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263.

Due process and equal protection; classifications based on illegitimacy. Bazos, 1973 WLR 908.

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a child born out of wedlock and not subsequently legitimated or adopted may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

(2) The declaration provided in sub. (1) may be filed at any time except after a termination of the natural father's rights under s. 48.425 or 48.43. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

(3) A copy of a declaration filed with the department under sub. (1) shall be sent to the mother at her last-known address. Nonreceipt of such copy shall not affect the validity of the declaration. The mother may send a written response to the declaration to the department, and the written response shall be filed with the declaration. Failure to send a written response shall not constitute an admission of the statements contained in the declaration.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.

History: 1973 c. 263.

The constitutional rights of a putative father to establish his parentage and assert parental rights. 58 MLR 175.

48.027 Child custody jurisdiction. All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 283.

ORGANIZATION OF COURT

48.03 Designation of the juvenile court.

(1) When hearing cases arising under this chapter, the court shall be known as a juvenile court.

(2) The judge of a court designated as a juvenile court under sub. (1) shall set apart a time and place to hold juvenile court.

(3) In the case of the absence or disability of the judge of a court designated as a juvenile court, another judge shall be designated under s. 251.182 to act temporarily in his place. If the judge so designated to act temporarily is from a county other than the one for which he was elected, he shall receive his expenses as provided in s. 252.073 or 253.08, whichever applies.

(4) The juvenile court is a court of record.

History: 1971 c. 46.

Cross Reference: See 253.13 for provision that the county court has exclusive jurisdiction of all proceedings under ch. 48.

48.035 Juvenile court, Menominee county. Menominee county shall be attached to Shawano county for judicial purposes to the extent of the jurisdiction and functions of the juvenile court and the office and functions of the judge of juvenile court, and the duly designated judge of juvenile court of Shawano county shall serve in Menominee county with all the duties, rights and powers of judge of juvenile court therein, and no judge of juvenile court shall be designated for Menominee county, the county not being organized for that purpose. The county boards of Menominee county and Shawano county shall enter into an agreement on administration of this section and the prorating of expenditure involved, and for such purposes the county board of supervisors of Menominee county shall be authorized to appropriate, levy and collect a sum each year sufficient to pay its share of such expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the judge of the circuit court for the Tenth circuit shall, upon appropriate notice and hearing, determine the prorating of such expenditures on the basis of a fair allocation to each county under such procedure as he shall prescribe.

48.04 Employes of the juvenile court.

(1) The clerk and stenographic reporter of the court or courts designated as the juvenile court in each county shall serve as the clerk and stenographic reporter of the juvenile court.

(2) If the county contains one or more cities of the second or third class and the court designated as the juvenile court does not have a clerk other than the register in probate, the judge may appoint, by an instrument in writing, filed

with the county clerk, a clerk of the juvenile court, who shall be a stenographer and shall perform the duties of clerk and reporter of such court. This clerk shall take and file the official oath and shall receive such salary as the county board determines.

(3) The district attorney shall perform any duties in connection with court proceedings as the judge may request.

See note to 59 47, citing 62 Atty. Gen. 273.

48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) In counties having a population of 500,000 or more, the county board of supervisors shall provide the court with the services necessary for investigating and supervising cases by operating a children's court center under the supervision of a director who shall be appointed as provided in s. 46.21 (4) under the laws governing civil service in the county. The director shall be the chief administrative officer of said center and of the intake, probation and detention sections thereof except as herein otherwise provided, and as such officer shall be charged with administration of the personnel and services of such sections and of the detention home, and be responsible for supervising both the operation of the physical plant and the maintenance and improvement of the buildings and grounds of said center. The center shall include investigative services for all children alleged to be dependent or neglected to be provided by the county department of public welfare, and the services of an assistant district attorney or assistant corporation counsel or both, who shall be assigned to the center to provide investigative as well as legal work in such cases. The chief judge of the county board of judges shall formulate written judicial policy governing juvenile court services and the director shall be charged with executing such judicial policy. The chief judge or a designee shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned thereto. The county board of public welfare shall develop policies and establish necessary rules and regulations for the management and administration of the nonjudicial operations of the children's court center, but any such policy, rule or regulation shall be subject to adoption of a different policy, rule or regulation by the county board of supervisors by a majority of the members thereof present and voting; and the director thereof shall report and be responsible to the director of institutions and departments for the execution of all nonjudicial operational policies, rules and regulations governing the center, including activities of probation officers whenever they are not performing services for

the court. The director of said center shall also be responsible for the preparation and submission to the county board of public welfare of the annual budget for the center except for such judicial functions or responsibilities which are delegated by law to the judge or judges and clerk of circuit court. Such board shall make provision in the organization of the office of director for the devolution of the director's authority in the case of temporary absence, illness, disability to act or a vacancy in position and shall establish the general qualifications for the position. Such board shall have the further authority to investigate, arbitrate and resolve any conflict in the administration of the center as between judicial and nonjudicial operational policy, rules and regulations, except that the final disposition thereof shall be subject to the approval of the county board of supervisors by a majority of the members thereof present and voting, but shall not have authority or assert jurisdiction over the disposition of any case or child after a written order for detention is made under s. 48.29 (2) or if a petition is filed pursuant to s. 48.20. All personnel of the intake, detention and probation sections, including employes of the detention home, shall be appointed under civil service by the director except that existing court service personnel having permanent civil service status may be reassigned to any of the respective sections within the center specified herein.

(b) Notwithstanding par (a), the county board of supervisors may institute changes in the administration of services to the children's court in order to qualify for the maximum amount of federal and state aid as provided in sub. (3) and s. 49.52.

(2) COUNTIES WITH A POPULATION UNDER 500,000. In counties having less than 500,000 population the county board shall provide the court with the services necessary for investigating cases and supervising cases in one or both of the following ways:

(a) By providing for one or more juvenile court workers to be appointed by the judge of the juvenile court. Whenever possible, the juvenile court workers shall have the qualifications required for state social workers under civil service law who perform similar types of duties. If there is more than one juvenile court worker appointed for a county, the judge shall designate one of the number to act as chief juvenile court worker and to supervise the other workers.

(b) By authorizing the county welfare department to provide such services in accordance with s. 46.22.

(3) STATE AID. State aid to any county for court services under this section shall be at the same net effective rate that each county is

reimbursed for county administration under s. 49.52.

History: 1971 c. 125; 1975 c. 39, 199, 302, 307, 422.

48.07 Additional sources of court services. If the county board has complied with s. 48.06, the court may obtain supplementary services for investigating cases and providing supervision of cases from one or more of the following sources:

(1) **STATE DEPARTMENT.** The court may request the services of the department for cases with special needs which cannot adequately be provided by county services. The department may furnish such requested services, subject to s. 46.03 (18). When such services are requested the department shall provide, from the appropriation under s. 20.435 (4) (jc), such services only to the extent that the county provides funds to the department equal to the net cost the department will incur as a result of providing the services requested.

(2) **LICENSED CHILD WELFARE AGENCY.** The court may request the services of a licensed child welfare agency in accordance with procedures established by that agency. Such child welfare agency shall receive no compensation for these services but may be reimbursed out of funds made available to the court for the actual and necessary traveling expenses incurred in the performance of duties for the court.

(3) **COUNTY WELFARE DEPARTMENT IN POPULOUS COUNTIES.** In counties having a population of 500,000 or more, the director of the county welfare department may request the court to authorize his department to provide services for furnishing emergency shelter care to any child whose need therefor, either by reason of dependency, neglect or delinquency or for protective reasons, is brought to the attention of the department. Upon such request, the court may authorize the director to appoint members of his department to furnish emergency shelter care services for such child. The emergency shelter care may be given in the county children's home, a foster home or an agency-operated institution or may be provided by the furnishing of home-maker's services by the department in the home where the child resides. Such emergency shelter care shall be provided for separate periods of not to exceed 24 hours each, except that if any part of such period falls on a day on which the court is not in session, the period shall be extended to 5 p.m. of the first day thereafter on which a court session is held. The person appointed to furnish such services shall file a petition under s. 48.20 in court before the expiration of such period.

History: 1975 c. 39.

48.08 Duties of person furnishing services to court. (1) It is the duty of each person appointed to furnish services to the court as provided in ss. 48.06 and 48.07 to make such investigations and exercise such discretionary powers as the judge may direct, to keep a written record of such investigations and to submit a report to the judge. Such person shall keep informed concerning the conduct and condition of the child under his supervision and shall report thereon as the judge directs.

(2) Each person appointed to furnish services for the court has the powers of police officers and deputy sheriffs for the purpose of carrying out his duties in connection with the court.

(3) (a) The chief administrative officer appointed under s. 48.06 (1), or any person designated thereunder to exercise that authority during the officer's absence, has the power to perform all the duties of a judge of the children's court prior to the filing of a petition, but such power shall not be exercised if such judge or a temporary judge is available at the center to perform the duty.

(b) A juvenile court worker serving as part of the court staff under s. 48.06 (2) (a) has the power to perform all the duties of the judge prior to the filing of a petition if authorized by the judge to do so.

History: 1975 c. 302, 421.

48.11 Advisory board. (1) The court may appoint a board of not more than 15 citizens of the county, known for their interest in the welfare of children, who shall serve without compensation, to be called the advisory board of the court. The members of the board shall hold office during the pleasure of the court. The duties of the board are:

(a) To advise and co-operate with the court upon all matters affecting the workings of this law and other laws relating to children, their care and protection.

(b) To familiarize themselves with the functions and facilities of the court under this law and to interpret to the public the work of the court.

(2) Nothing in this section shall be construed to require the juvenile court to open court records or to disclose their contents.

JURISDICTION OF COURT OVER CHILDREN

48.12 Jurisdiction over children alleged to be delinquent or in need of supervision. The juvenile court has exclusive jurisdiction, except as provided in ss. 48.17 and 48.18 over any child:

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(1) Who is alleged to be delinquent because he has violated any federal criminal law, criminal law of any state, or any county, town or municipal ordinance that conforms in substance to the criminal law; or

(2) Who is alleged to be in need of supervision because:

(a) He is habitually truant from school or home; or

(b) He is uncontrolled by parent, guardian or legal custodian; or

(c) He habitually so deports himself as to injure or endanger the morals or health of himself or others.

History: 1971 c. 125; 1973 c. 90

Neither 971.20 nor 261.08 is applicable to juvenile matters, and there is no applicable statute granting a statutory right for a change of judge, for or without cause, in commitment hearings in the juvenile court. Since due process requires that every person has a right to a fair trial by an impartial judge and jury, a juvenile may move a judge in a juvenile matter to disqualify himself on the ground of prejudice, but the judge need not accept such affidavit at face value because a showing of prejudice in fact must be made. *State ex rel. Mitchell v. Bowman*, 54 W (2d) 5, 194 NW (2d) 297

Under (1), the Iron county juvenile court has jurisdiction of delinquency petitions based on violation of the Michigan criminal law by children who are residents of and present in Iron county 62 Atty Gen 229

This section vests exclusive jurisdiction in the juvenile court over persons under 18 years of age who violate 66 054 (25) and 176.31, which impose criminal penalties on a person under 18 years of age 63 Atty Gen. 95

48.13 Jurisdiction over children alleged to be neglected or dependent. The juvenile court shall have exclusive jurisdiction over:

(1) A child who is alleged to be neglected because:

(a) He is abandoned by his parent, guardian or legal custodian; or

(b) He is without proper parental care because of the faults or habits of his parent, guardian or legal custodian; or

(d) He is without necessary subsistence, education or other care necessary for his health, morals or well-being because his parent, guardian or legal custodian neglects or refuses to provide it; or

(e) He is without the special care made necessary by his physical or mental condition because his parent, guardian or legal custodian neglects or refuses to provide it; or

(f) His occupation, behavior, condition, environment, or associations are such as to injure or endanger his welfare or that of others; or

(g) He is in a home for which a license is required and which any agency authorized by law to license foster homes has refused to license; or

(h) He has been placed in a home for adoption for which approval by the county court is required by s. 48.63 and the county court has refused to approve the home; or

(i) He is in the custody of a person whose petition to adopt him has been denied by the county court and the case has been transferred to the juvenile court under s. 48.95; or

(j) He comes within the provisions of s. 48.12 but his conduct results in whole or in part from parental neglect;

(2) A child who is alleged to be dependent because:

(a) He is without a parent or guardian; or

(b) He is in need of special care and treatment because of his physical or mental condition and his parent, guardian or legal custodian is unable to provide it; or

(c) His parent or legal custodian for good cause desires to be relieved of his legal custody.

(d) He is without necessary care or support through no fault of his parent, guardian or legal custodian.

48.14 Jurisdiction over other matters relating to children. The juvenile court shall have exclusive jurisdiction over:

(1) The termination of parental rights to a minor in accordance with the provisions of ss. 48.40 to 48.43.

(2) The appointment and removal of a guardian of the person in the following cases:

(a) For a minor, where parental rights have been terminated under ss. 48.40 to 48.43; or

(b) For a child, where the child is found to be dependent under s. 48.13 (2) because he is without a parent or guardian.

(3) The transfer of legal custody of developmentally disabled and mentally ill children living or found in the county, pursuant to ch. 51. If a child is before the court, is alleged to be delinquent, neglected or dependent, and if it appears that the child may be developmentally disabled or mentally ill, the court may order a hearing to determine whether the child is developmentally disabled or mentally ill according to ch. 51, except that the order for hearing shall serve in lieu of the petition required by s. 51.20(1).

History: 1975 c. 430

48.15 Jurisdiction of other courts to determine legal custody. Nothing contained in ss. 48.12, 48.13 and 48.14 shall deprive other courts of the right to determine the legal custody of children upon writs of habeas corpus, or to determine the legal custody or guardianship of children when such legal custody or guardianship is incidental to the determination of causes pending in such other courts. But the jurisdiction of the juvenile court shall be paramount in all cases involving children alleged to come within the provisions of ss. 48.12, 48.13 and 48.14.

48.16 Venue. Venue for any proceeding under ss. 48.12 and 48.13 shall be in any of the following: the county where the child resides, the county where he is present or, in the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred.

48.17 Jurisdiction over traffic violations. Courts of criminal and civil jurisdiction shall have exclusive jurisdiction in proceedings against children 16 or older for violations of chs. 341 to 349, or of traffic regulations as defined in s. 345.20.

History: 1971 c. 40, 278; 1975 c. 39

48.18 Jurisdiction of criminal and civil courts over children 16 or older. Except as provided in s. 48.17, the criminal and civil courts shall have jurisdiction over a child 16 or older who is alleged to have violated a state law or a county or municipal ordinance only if the juvenile court judge deems it contrary to the best interest of such child or of the public to hear the case and enters an order waiving his jurisdiction and referring the matter to the district attorney, corporation counsel or city attorney, for appropriate proceedings in a criminal or civil court. In that event, the district attorney, corporation counsel or city attorney of the county or municipality shall proceed with the case in the same manner as though the jurisdiction of the juvenile court had never attached.

The waiver of jurisdiction by the proper juvenile court must take place before the criminal court has jurisdiction and particularly where offenses in 2 counties are involved a record should be made. *Gibson v. State*, 47 W (2d) 810, 177 NW (2d) 912.

In determining whether or not juvenile jurisdiction over a minor reported to have committed a criminal offense should be waived, it is proper for the juvenile court to analyze the testimony produced at a hearing held in conformity with Kent in light of the 8 criteria for waiver found in that case. The court need not take testimony from welfare workers or psychiatrists as to the case. *Mikulovsky v. State*, 54 W (2d) 699, 196 NW (2d) 748.

This section is not unconstitutional because of vagueness. In re Interest of F R W (a minor), 61 W (2d) 193, 212 NW (2d) 130.

Since juveniles receive the same Miranda warnings as adults, a confession made by a juvenile during custodial interrogation prior to his waiver into adult court is admissible in later adult proceedings. *Therault v. State*, 66 W (2d) 33, 223 NW (2d) 850.

Where attorney appointed to represent a juvenile in a waiver hearing had only one hour's preparation time and neither the juvenile, his parents or any guardian were notified, there was a failure of due process. *Miller v. Quatsoe*, 332 F Supp 1269

Filing of a complaint may not be delayed in order to avoid juvenile court jurisdiction unless the juvenile is granted a hearing with constitutional safeguards. *Miller v. Quatsoe*, 348 F Supp 764.

Juvenile waiver statute; delegation of legislative power to judiciary. *Zekas*, 1973 WLR 259

PROCEDURES

48.19 Informal disposition. Whenever any person gives the court information tending to show that a child comes within the provisions of s. 48.12 or 48.13, an investigation shall be made by persons designated by the court to determine the facts. If this investigation shows that the child does not come within the provisions of s. 48.12 or 48.13, the court shall take no further action. If the investigation shows that the child is within the provisions of s. 48.12 or 48.13 the court may authorize the filing of a petition under s. 48.20 or, if it determines that neither the interests of the child nor of the public require that a petition be filed, may defer further proceedings on the condition that the child appear with his parent, guardian or legal custodian for counseling and advice or that the child abide by such obligations imposed upon him with respect to his future conduct as the court deems necessary or advisable to insure the child's protection, correction or rehabilitation. The obligations so imposed may be in writing and copies thereof furnished to the parent, guardian or legal custodian of the child. If a parent, guardian or legal custodian objects to these obligations he shall have the right to have a petition filed in relation to his child.

A pre-petition investigation is authorized whenever any human being directs information to the juvenile court tending to show that a child is delinquent, in need of supervision, dependent or neglected. 63 Atty. Gen. 279.

48.195 Notice to interested parties. A person who has filed a declaration of interest under s. 48.025, a person who may be the natural father of the child and who is living in a familial relationship with the child or a person who has been adjudged in a court proceeding to be the natural father shall be entitled to notice of proceedings pursuant to a petition under s. 48.20 or 48.40, and shall be given consideration in any informal disposition under s. 48.19. After a termination of the natural father's rights under s. 48.425 or 48.43, the person shall no longer be entitled to notice of or consideration in such proceedings.

History: 1973 c. 263.

48.20 Petition. (1) The petition and all subsequent court documents under ss. 48.12 and 48.13 shall be entitled "In the interest of , a child under 18 years of age".

(2) The petition shall be drafted by a suitable person designated by the court. It shall be verified and may be upon information and belief. It shall set forth plainly: (a) the facts which bring the child within the jurisdiction of the court; (b) the name, age, and residence of the child; (c) the names and residence of his parents;

(d) the name and residence of his guardian if there be one, of the person having legal custody of the child, or of the nearest known relative if no parent or guardian can be found.

(3) If any of the facts in sub. (2) are not known or cannot be ascertained by the petitioner, the petition shall so state.

There need not be a finding of probable cause before the issuance of a juvenile delinquency petition and no preliminary hearing is constitutionally required. In re D. M. D. (a minor) v. State, 54 W (2d) 313, 195 NW (2d) 594.

48.21 Summons; notice. (1) After a petition has been filed relating to facts under s. 48.12 or 48.13 and after such further investigation as the court directs, unless the parties hereinafter named voluntarily appear, the court shall issue a summons requiring the person who has legal custody of the child to appear personally and, if the court so orders, to bring the child before the court at a time and place stated.

(2) If the person so summoned is someone other than the parent or guardian of the child, the parent or guardian or both shall be notified of the pendency of the case and of the time and place appointed.

(3) Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

48.22 Service of summons; expenses. (1) Service of summons or notice required by s. 48.21 shall be made personally by the delivery of a copy thereof to the persons summoned or notified. But, if the court is satisfied that it is impracticable to serve such summons or notice personally, it may make an order providing for the service of such summons or notice by registered mail addressed to the last-known addresses of such persons. Personal service shall be effected at least 24 hours before the time of the hearing; registered mail shall be mailed at least 5 days before the time of the hearing if within the state or 14 days if outside the state.

(2) Service of summons or notice required by s. 48.21 or 48.42 may be made by any suitable person under the direction of the court.

(3) The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under ss. 48.12, 48.13, 48.14 and 48.44 shall be a charge on the county when approved by the court.

History: 1971 c. 159.

48.23 Failure to obey summons; capias. If any person summoned fails without reasonable cause to appear, he may be proceeded against for

contempt of court. In case the summons cannot be served or the parties served fail to obey the same, or in any case when it appears to the court that the service will be ineffectual a capias may be issued for the parent or guardian or for the child.

48.24 Physical and mental examination.

Upon a finding by the court that reasonable cause exists to warrant such examination, the court may order any person coming within its jurisdiction to be examined as an outpatient by a licensed psychologist, a psychiatrist or a physician, appointed by the court, in order that the condition of such person may be given due consideration in the disposition of the case. The expenses of such examination, when approved by the court, shall be paid by the county. In counties maintaining an examination service by one or more physicians, psychiatrists or licensed psychologists such county service shall be used for the purposes of this examination.

History: 1975 c. 430.

48.25 Hearing. (1) **GENERAL.** The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he considers desirable. The hearing may be adjourned from time to time. The general public shall be excluded and only such persons admitted as the court shall find to have a direct interest in the case or in the work of the court. The presence of the child in court may be waived by the court at any stage of the proceeding.

(2) **JURY TRIAL.** There shall be a jury trial only if one is demanded. Practice in civil actions shall govern the selection of jurors.

(3) **EVIDENCE.** If there is a disputed issue of fact, the customary rules of evidence applied to issues of fact in civil trials shall be followed. The finding of fact shall rest on the preponderance of evidence adduced under those rules. Every order shall be based on a finding of fact, entered of record.

(4) **RECORD.** Stenographic notes of the hearing shall be kept but shall be transcribed only upon order of the court.

(5) **GUARDIAN AD LITEM.** The court may appoint a guardian ad litem in any case in which it feels that such appointment is desirable.

(6) **APPOINTMENT OF COUNSEL.** If any child or his parents desire counsel but are unable to employ it, the court in its discretion may appoint counsel to represent them. Such counsel shall be allowed reasonable compensation to be paid by the county wherein the proceeding shall be held, upon the order of the court.

Hearsay testimony should be excluded unless it falls within one of the exceptions to the hearsay rule. Rusecki v. State, 56 W (2d) 299, 201 NW (2d) 832.

Juvenile judge may admit or exclude district attorney in juvenile proceedings. 60 Atty. Gen. 449.

See note to art. 1, sec. 5, citing *McKeiver v. Pennsylvania*, 402 US 528.

48.26 Records. (1) Peace officers' records of children shall be kept separate from records of persons 18 or older and shall not be open to inspection or their contents disclosed except by order of the court. This subsection shall not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child involved or to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 16 or older who are transferred to the criminal courts.

(2) Juvenile court records shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court.

(3) This section shall not apply to proceedings for violation of chs. 340 to 349 or any county or municipal ordinance enacted under ch. 349.

History: 1971 c. 278.

48.27 Support of child when legal custody transferred from parent.

(1) (a) If legal custody is taken from the parents and disposition is made under s. 48.34 (1) (c) or (d) or 48.35 (1) (b) or (c), the duty of the parents to provide for support shall continue even though the legal custodian may provide such support, and upon a parent's failure to make payment for such support, the department may apply to the juvenile court for an order to compel payment; but if the parents are unable to provide such support, the financial resources of the child may be used therefor.

(b) Upon termination of parental rights and disposition under ss. 48.40 and 48.43, the financial resources of the child may be used for its support even though its legal custodian may provide such support.

(2) When a child whose legal custody has not been taken from its parents is given medical, psychological or psychiatric treatment by order of the court and no provision is otherwise made by law for payment, the cost thereof, when approved by order of the court, shall be a charge upon the county, but nothing herein shall prevent recovery of such costs from the parents of such child, as the court may order.

(3) When a child brought into court is placed in a county or private institution for care, or when the child is given medical, psychological or psychiatric treatment under order of the court, the judge shall determine the legal settlement of the child and shall forward a copy of this finding,

which may be included within the order, within 20 days by certified mail to the county clerk of the county of legal settlement. Failure to so notify the county of legal settlement within 20 days shall be a bar to recovery for care and treatment already rendered from the county of legal settlement and shall be a bar in the future until notice is sent but the provisions of this subsection as to the judge's finding shall apply only to orders made by the court after August 15, 1965.

(4) The county charged with the cost of the care and treatment under subs. (2) and (3) may recover the cost from the county where the child has legal settlement by filing verified claims with that county clerk which shall be payable as are other claims against the county. Any dispute relating to these claims and involving a judge's finding of legal settlement may be appealed by any county to the department under s. 46.106 (4) to (7) and adjusted pursuant to this procedure after hearing, review and correction.

History: 1975 c. 430 s. 80.

DETENTION

48.28 Taking child into custody. (1) No child may be taken into immediate custody except:

(a) With a capias issued by the judges of the juvenile court in accordance with s. 48.23 or with a warrant; or

(b) When in the presence of the officer who takes the child into custody a child has violated a county, town or municipal ordinance or a state or federal law and the officer believes that such action is necessary for the protection of the public interest; or

(c) When the officer finds a child in such surroundings or condition that he considers it necessary that he take the child into immediate custody for the child's welfare; or

(d) When it is reasonably believed that a child has committed an act which if committed by an adult would be a felony; or

(e) When it is reasonably believed that the child has run away from his parents, guardian or legal custodian or is a fugitive from justice; or

(em) On order of the court when made upon a showing satisfactory to the court that the welfare of a child demands that it be immediately removed from its present custody, the order to specify that the child be placed in the custody of a licensed welfare agency pending a hearing on the matter; or

(f) When it is reasonably believed that the child has violated the terms of his probation, parole or other field supervision.

(2) Taking into custody under this section shall not be considered an arrest.

48.29 Release or detention. (1) When a child is taken into custody as provided in s. 48.28, the parent, guardian or legal custodian of the child shall be notified as soon as possible. The person taking the child into custody shall, unless it is impracticable, undesirable, or has been otherwise ordered by the court, return the child to his parent, guardian or legal custodian on the promise of such person to bring the child to the court, if necessary, at a stated time or at such time as the court may direct. If the person taking the child into custody believes it desirable, he may request such parent, guardian or legal custodian to sign a written promise to bring the child to court as provided above.

(2) If the child is not released as provided in sub. (1), he may be detained in a place of detention specified in s. 48.30 but only on written order of the court specifying the reason for detention. The parent, guardian or legal custodian of the child shall be notified of the place of detention as soon as possible. If because of the unreasonableness of the hour or the fact that it is a Sunday or holiday it is impractical to obtain a written order from the court, the child may be detained without a written order of the court for a period of not to exceed 24 hours but a written record of such detention shall be kept and a report in writing filed with the court. The judge of the juvenile court may authorize any person, designated by s. 48.06 or 48.07 to provide services for the court, to order detention of the child.

A detention order for more than 24 hours must be made by a juvenile court judge after a hearing; a social worker may order detention only because of the unreasonableness of the hour or because it is a Sunday or a holiday and it is impracticable to obtain an order from the court. State ex rel. Morrow v. Lewis, 55 W (2d) 502, 200 NW (2d) 193.

The failure of police to notify parents or guardian does not per se render the confession inadmissible. Theriault v. State, 66 W (2d) 33, 223 NW (2d) 850.

48.30 Place of detention. (1) A court may order in writing, as provided in s. 48.29, the detention of a child in one of the following places:

(a) A detention home established in accordance with s. 48.31; or

(b) A licensed foster home, subject to the supervision of the court; or

(c) A suitable place of detention maintained by a licensed child welfare agency, subject to the supervision of the court; or

(d) If the child's habits or conduct are such as to constitute a menace to himself or others, he may be detained in a jail or other facility for the detention of adults if he is placed in a room or ward which is entirely separate from adults confined therein and where there can be no communication with adults confined therein. This room or ward must have been approved by

the department in a written instrument filed with the clerk of the juvenile court.

(2) No child shall be detained in a jail or other facility for the detention of adults except in accordance with this section.

(3) If a licensed foster home or licensed child welfare agency is used for the detention of children a reasonable sum, to be fixed by the court, shall be paid by the county for the care of the children.

48.31 Establishment of detention homes and shelter care facilities.

(1) The county board of one county may establish a detention home or a shelter care facility or both or 2 or more counties may join together and establish a detention home or a shelter care facility or both in accordance with s. 46.20. In counties having a population of less than 500,000, the policies of the detention home or shelter care facility shall be determined by the judge of the juvenile court or, in the case of a detention home or shelter care facility established by 2 or more counties, by a committee of the judges of the juvenile courts in the participating counties. In counties having a population of 500,000 or more, the nonjudicial operational policies of the detention home and the detention section of the children's court center shall be established by the county board of public welfare as specified in s. 48.06 (1), and the execution thereof shall be the responsibility of the director of the children's court center.

(2) Plans for the detention home or shelter care facility shall be approved by the department as provided in s. 46.17. If the department approves, the home may be a part of a public building in which there is a jail or other facility for the detention of adults if it is so physically segregated from such jail or other facility that it may be entered without passing through areas where adults are confined and that children detained in the home cannot communicate with or view adults confined therein.

(3) In counties having a population of less than 500,000, the detention home and shelter care facility shall be in charge of a superintendent and shall be furnished and conducted, as far as possible, as a family home. The judge or, where 2 or more counties operate a joint detention home or shelter care facility, the committee of judges shall appoint the superintendent and other necessary personnel for the care and education of the children in the detention home and shelter care facility, subject to civil service regulations in counties having civil service. In counties having a population of 500,000 or more, the director of the children's court center under the direction of the county board of public welfare as specified in s. 48.06 (1) shall be in charge of and responsible for the

detention home, the detention section of said center and the personnel assigned to this section, including a detention supervisor or superintendent. The director of the children's court center may also serve as superintendent of detention if the county board of supervisors so determines.

48.32 State-wide plan for detention homes. The department shall assist counties in establishing detention homes under s. 48.31 by developing and promulgating a state-wide plan for the establishment and maintenance of suitable detention facilities reasonably accessible to each court.

DISPOSITION

48.33 Dismissal of petition. If the court finds that the child is not within the jurisdiction of the court, or that the facts alleged in the petition have not been proved, it shall dismiss the petition.

48.34 Disposition if child adjudged delinquent. (1) **TYPE OF DISPOSITION.** If the court finds that the child is delinquent, it shall enter an order making one of the following dispositions of the case:

(a) Counsel the child or his parents, guardian or legal custodian; or

(b) Place the child under supervision in his own home under conditions prescribed by the court including reasonable rules for his conduct and the conduct of his parents, guardian or legal custodian, designed for the physical, mental and moral well-being and behavior of the child; or

(c) Relieve the parent, guardian or legal custodian of legal custody of the child and place him in a foster home as described in s. 48.62, except that the home does not have to be licensed if the child is placed there for less than 30 days;

(d) Transfer legal custody of the child to one of the following:

1. A relative of the child; or
2. A county agency specified in s. 48.56 (1); or
3. A licensed child welfare agency; or
4. The department, if the department so approves;

(e) If the child is found to have violated a state law or a county, town or municipal ordinance which has resulted in intentional damage to the property of another, the court may order the child to make reasonable restitution for such damage if the court considers it beneficial to the well-being and behavior of the child;

(f) If the child is in need of special treatment and care, the court may order the child's parents, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails to provide such care, the court may order it

provided. Alternatively, the court may make a judicial determination that continuance in the home of the parent or guardian would be contrary to the child's welfare for any reason and place the child in the licensed foster home or child-caring institution recommended by the child-placing agency. The court will review for approval the plan for the child agreed upon by the parent or guardian and the child-placing agency. When it is determined that a child is in need of special treatment and care, legal custody shall not be transferred from the parent or guardian unless it is shown that the special treatment and care cannot be accomplished by means of voluntary consent of the parent or guardian.

(g) The court may restrict, suspend or revoke the operating privilege of a child who is adjudicated delinquent. Any limitation of the operating privilege shall be endorsed upon the operator's license and notice of the limitation forwarded to the department of transportation.

(2) **ORDERS FOR SUPERVISION.** All orders for supervision under sub. (1) (b) shall automatically terminate at the end of one year unless the court specifies a shorter or longer period in its order. But before the order has expired the court has continuing jurisdiction to renew the order or make some other disposition of the case, either on its own motion or that of any interested party, until the child reaches the age of 18.

(3) **ORDERS TRANSFERRING LEGAL CUSTODY.** (a) All orders under sub. (1) (c) and (d), except orders transferring legal custody to the department, shall be for a specified length of time set by the court. But, before the order has expired the court has continuing jurisdiction to renew the order or make some other disposition of the case, either on its own motion or that of any interested party, until the child reaches the age of 18. Any person to whom legal custody of a child is transferred, except the department, shall report to the court in writing once a year on the status of the child. All transfers of legal custody to the department under sub. (1) (d) except those under ch. 54 shall be until the age of 18 unless the department discharges the child sooner under s. 48.53.

(b) When the court transfers legal custody of a child to any licensed child welfare agency or the department, it shall transmit with the order transferring legal custody a summary of its information concerning the child or a transcript of the testimony taken at the hearing.

(4) **CONTINUING JURISDICTION.** (a) The continuing jurisdiction of the court shall not prevent either a juvenile court in another county from taking jurisdiction of a child alleged to have violated a state law or a county, town or municipal ordinance in that county or a criminal

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court from taking jurisdiction of a person 18 or over who is alleged to have violated a state or federal law.

(b) If a child who is under the continuing jurisdiction of the court is present in another county, the court may order the case transferred along with all appropriate records to the court of the county where the child is.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39.

See note to art. 1, sec. 8, citing State ex rel. Bernal v. Hershman, 54 W (2d) 626, 196 NW (2d) 721.

Procedural guarantees to be observed in revocation proceedings stated State ex rel. R.R. v. Schmidt, 63 W (2d) 82, 216 NW (2d) 18.

A child cannot be held longer than 5 days in a detention home awaiting placement under this section, 48.345 or 48.35, without express judicial authority. State ex rel. Harris v. Larson, 64 W (2d) 521, 219 NW (2d) 335.

A child adjudicated as delinquent may be committed to the department of health and social services for an indeterminate period which may extend beyond the sentence permissible for an adult as punishment for the equivalent crime. In re Interest of J.K. (a minor), 68 W (2d) 426, 228 NW (2d) 713.

Due process; revocation of a juvenile's parole. Sarosiek, 1973 WLR 954.

48.345 Disposition of a child in need of supervision. If the court finds that the child is in need of supervision, it shall enter an order making one of the following dispositions of the case:

(1) Counsel the child or his parents, guardian or legal custodian; or

(2) Place the child under supervision in his own home under conditions prescribed by the court including reasonable rules for his conduct and the conduct of his parents, guardian or legal custodian, designed for the physical, mental and moral well-being and behavior of the child; or

(3) Relieve the parent, guardian or legal custodian of legal custody of the child and place him in a foster home as described in s. 48.62, except that the home does not have to be licensed if the child is placed there for less than 30 days;

(4) Transfer legal custody of the child to one of the following:

(a) A relative of the child; or
(b) A county agency specified in s. 48.56 (1); or

(c) A licensed child welfare agency.

(5) Orders for supervision or transfer of custody under sub. (2), (3) or (4) shall be for a specified length of time not to exceed one year.

History: 1971 c. 125.

48.35 Disposition if child adjudged neglected or dependent. (1) **TYPE OF DISPOSITION.** If the court finds that the child is dependent or neglected, it shall enter an order making one of the following dispositions of the case:

(a) Place the child under supervision in his own home under conditions prescribed by the court including reasonable rules for his conduct and the conduct of his parents, guardian or legal

custodian, designed for the physical, mental and moral well-being and behavior of the child; or

(b) Relieve the parent, guardian or legal custodian of legal custody of the child and place him in a foster home as described in s. 48.62, except that the home does not have to be licensed if the child is placed there for less than 30 days;

(c) Transfer legal custody of the child to one of the following:

1. A relative of the child; or
2. A county agency specified in s. 48.56 (1); or
3. A licensed child welfare agency; or
4. The department, if the department so approves;

(d) If the child is in need of special treatment and care, the court may order the child's parent, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails to provide such care, the court may order it provided. Alternatively, the court may make a judicial determination that continuance in the home of the parent or guardian would be contrary to the child's welfare for any reason and place the child in the licensed foster home or child-caring institution recommended by the child-placing agency. The court will review for approval the plan for the child agreed upon by the parent or guardian and the child-placing agency. When it is determined that a child is in need of special treatment and care, legal custody shall not be transferred from the parent or guardian unless it is shown that the special treatment and care cannot be accomplished by means of voluntary consent of the parent or guardian.

(2) ORDERS TRANSFERRING LEGAL CUSTODY.

(a) All orders under sub. (1) (b) and (c) shall be for a specified length of time set by the court; but, before the order has expired, the court shall have continuing jurisdiction to renew the order or make some other disposition of the case, either on its own motion or that of any interested party, until the child reaches the age of 18. Any person to whom legal custody of a child is transferred shall report to the court in writing once a year on the status of the child.

(b) When the court transfers legal custody of a child to any licensed child welfare agency or the department, it shall transmit with the order transferring legal custody a summary of its information concerning the child or a transcript of the testimony taken at the hearing.

(3) **CONTINUING JURISDICTION.** If a child who is under the continuing jurisdiction of the court under this section is present in another county, the court may order that case transferred along with all appropriate records to the court of the county where the child is.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39.

48.37 Costs and fines. No costs shall be assessed against and no fines shall be imposed on any child in the juvenile court.

48.38 Effect of juvenile court proceedings. (1) No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any such child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction. The disposition of any child's case or any evidence given in the juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence disqualify a child in any future civil service examination, appointment or application.

(2) Nothing contained in this section shall be construed to preclude the juvenile court, under circumstances other than those specifically prohibited in sub. (1), from disclosing information to qualified persons if the court considers such disclosure to be in the best interests of the child or of the administration of justice.

Inferential impeachment; the presence of parole officers at subsequent juvenile adjudications. O'Donnell, 55 MLR 349.

48.39 Disposition by juvenile court bars criminal proceeding. Disposition by the juvenile court of any violation of state law coming within its jurisdiction under s. 48.12 shall bar any future proceeding on the same matter in criminal court when the child reaches the age of 18. This provision does not affect proceedings in criminal court which have been transferred under s. 48.18.

48.395 Medical authorization. The juvenile court may authorize medical services including surgical procedures when needed if the court determines that reasonable cause exists for such services and that the minor is within the jurisdiction of the court and consents.

History: 1971 c. 105

TERMINATION OF PARENTAL RIGHTS

48.40 Grounds for termination of parental rights. The court may, upon petition, terminate all rights of parents to a minor in any of the following cases:

(1) With the written consent of the parents to the termination of their parental rights, providing such consent may be withdrawn at any time prior to termination of their rights; or

(2) If it finds that one or more of the following conditions exist:

(a) That the parents have abandoned the minor; or

(b) That the parents have substantially or continuously or repeatedly refused or neglected or are unable for a prolonged indeterminate period to give the minor the parental care and protection necessary for his health, morals or well-being; or

(c) That, although the parents are financially able, they have substantially and continuously neglected to provide the minor with necessary subsistence, education or other care necessary for his health or well-being or have neglected to pay for such subsistence, education or other care when legal custody is lodged with others; or

(d) That the parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd or lascivious behavior or conviction and confinement for a felony (including hospitalization within the sex deviate statutes), which conduct or status is found by the court to be likely to be detrimental to the health, morals or the best interests of the minor; or

(e) That the parents, subsequent to a finding of neglect, have failed to correct the conditions leading to such a finding despite reasonable efforts under the direction of the court to rectify the conditions upon which such finding was based; or

(3) If the parents have been found mentally deficient or mentally ill by a court of competent jurisdiction in a proceeding other than the instant termination of a parental rights proceeding and the juvenile court finds:

(a) That because of such mental deficiency or mental illness the parents are and will continue to be incapable of giving the minor proper parental care and protection for a prolonged indeterminate period, or when one parent is found mentally deficient or mentally ill and the other parent has substantially or continuously or repeatedly refused or neglected to give the minor the parental care and protection necessary for his health, morals or well-being; or

(b) That grounds for termination under sub. (2) existed prior to the time of the finding of mental illness.

History: 1973 c. 263.

Parents whose rights have been terminated do not inherit from a child; his brothers and sisters (whether parental rights as to them have been terminated or not) are his heirs. Estate of Pamanet, 46 W (2d) 514, 175 NW (2d) 234.

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

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

48.41 Jurisdiction and venue for termination of parental rights. The juvenile court has jurisdiction to terminate parental rights if the minor is within the state or as otherwise allowed under s. 822.03. If a court has made an order under s. 48.34 or 48.35 transferring legal custody of the minor, that court shall hear the termination of parental rights proceeding unless it transfers the proceeding along with all appropriate records to the county where the minor or parents are. Otherwise venue for the proceeding is in the county either where the minor is or where the parents whose rights are being terminated are.

History: 1975c 283, 421

48.42 Procedure in terminating parental rights. (1) The termination of parental rights under s. 48.40 shall be made only after a hearing before the court. The court shall have notice of the time, place and purpose of the hearing served on the parents personally at least 10 days prior to the date of the hearing. If the court is satisfied that personal service, either within or outside the state, cannot be effected, then such notice may be given by registered mail sent at least 20 days before the date of the hearing to the last-known address of the parent. If notice by registered mail is not likely to be effective, the court may order notice to be given by publication at least 20 days before the date of the hearing. If notice is given by publication, the name of the mother shall be included in such notice only if the court following a hearing on the need for inclusion of the mother's name determines in any termination proceeding that such inclusion is essential to give effective notice to the natural father. In determining whether such inclusion is essential, the court shall consider the mother's right to privacy. Publication shall be in a newspaper likely to give notice in the county of the last-known address of the parent, whether within or without the state, or if no address is known, in the county where the termination petition has been filed. Publication within the state shall be as a class 1 notice, under ch. 985. Publication outside the state shall be in a manner which the court finds to be comparable to a class 1 notice. A parent who consents to the termination of his parental rights under s. 48.40 (1) may waive in writing the notice required by this section; if the parent is a minor or incompetent his waiver shall be effective only if his guardian ad litem concurs in writing.

(2) In the case of any minor or incompetent parent the court shall appoint a guardian ad litem. No parental rights may be terminated on consent under s. 48.40 (1) unless the guardian ad litem, in writing, joins in the written consent of the parent to the termination of his parental

rights. When the parent and the guardian ad litem consent in writing to the termination of parental rights, minority or incompetence shall not be grounds for later attack on an order terminating parental rights which order is based on such consent and the court's finding that the consent was freely and intelligently given.

(3) In addition to the notice provided parents under sub. (1), in a proceeding under s. 48.40 to terminate the parental rights to a child born out of wedlock and not subsequently legitimated or adopted, the court shall provide notice, as if he were a parent, to those persons specified in s. 48.195 and to a person alleged to the court to be the natural father of the child. Constructive notice shall be given in all cases where no person has previously been adjudged to be the natural father and the court is unable to adjudge paternity. If notice is given by publication the name of the mother shall be included in such notice only if the court following a hearing on the need for inclusion of the mother's name determines that such inclusion is essential to give effective notice to the natural father. In determining whether such inclusion is essential, the court shall consider the mother's right to privacy.

History: 1973 c. 263.

A guardian ad litem can be appointed any time before the hearing. Where the mother is no longer a minor at the time of the hearing and when she signs the consent, no guardian ad litem is necessary. *Schroud v. Milw. County Dept. of Pub. Welfare*, 53 W (2d) 650, 193 NW (2d) 671

Notice of termination of parental rights must be given to the father of an illegitimate child. *State ex rel. Lewis v. Lutheran Social Services*, 59 W (2d) 1, 207 NW (2d) 826

48.425 Hearings and findings. (1) If no person has previously been adjudged to be the natural father of the child, the court shall make inquiry of the mother as to the identity of the natural father. The parental rights of a person who has been adjudged in a court proceeding to be the natural father of a child born out of wedlock and not subsequently legitimated or adopted shall be terminated only in accordance with s. 48.43.

(2) If a person who has filed a declaration under s. 48.025 or a person who alleges himself to be the natural father of the child appears at the hearing, the court shall determine whether he is the natural father by a clear and convincing preponderance of the evidence. Upon a finding that he is the natural father, he shall be adjudged a parent. His parental rights shall be terminated only in accordance with s. 48.43.

(2n) If paternity has been adjudged, the court may make and enforce such orders or provisions, in the best interests of the child, for the suitable care, custody, support and maintenance of the child as a court having jurisdiction over actions affecting marriage may

make under ss. 247.23, 247.24 and 247.25 to 247.28, until parental rights of one or both of the parents of such child are terminated.

(3) If the court determines that it is unable to identify the natural father the court may, following the hearing, based on the best interests of the child, terminate any right or interest the natural father may have in the child only if at least 30 days have elapsed since the date of birth of the child.

(5) Termination of the natural father's rights under sub. (3) or s. 48.43 shall be required prior to the adoption of the child.

(6n) (a) The natural mother shall have legal custody of a child born out of wedlock and not subsequently legitimated or adopted, unless legal custody is transferred to another under s. 48.34, 48.345, 48.35 or 48.43 or the natural father is granted legal custody under par. (b) or sub. (2n).

(b) A natural parent whose parental rights have not been terminated may, at any time while he retains such status, petition the court for custody of the child. Notice of a hearing on the petition shall be served on all interested parties, and, after hearing, the court may grant such legal custody to the natural parent as a court having jurisdiction over actions affecting marriage may grant under s. 247.24. The court shall grant such custody in accordance with the standards under s. 247.24.

History: 1973 c. 263.

48.43 Disposition of proceeding to terminate parental rights. (1) If, after a hearing, the court finds that one or more of the conditions set out in s. 48.40 exist, it may terminate parental rights. If the court terminates parental rights of both parents, or of the only living parent, the court shall transfer guardianship and legal custody of the minor to:

(a) A county department of public welfare in counties having a population of 500,000 or more; or

(am) A county department of public welfare; or

(b) A child welfare agency licensed to accept guardianship of children; or

(c) The department; or

(d) A suitable individual in whose home the minor has resided at least one year prior to the termination of parental rights.

(2) If only one parent consents under s. 48.40 (1) or if the conditions specified in s. 48.40 (2) are found to exist as to only one parent, the rights of only that parent with reference to the minor may be terminated without affecting the rights of the other parent.

(3) A certified copy of the order terminating parental rights, a certified copy of the birth

certificate of the minor, and a transcript of the testimony in the termination of parental rights hearing shall be furnished by the court to the person given guardianship of the minor.

(4) Except as otherwise determined by the court, any guardian appointed under the provisions of this chapter shall file with the court a report in writing on the status of the child at the end of 6 months following the date of the order appointing such guardian and on each anniversary date of such order. A copy of each such report so filed shall be made available to the county court in which the petition for the adoption of the child is filed at the time of filing the petition.

History: 1973 c. 263; 1975 c. 307.

JURISDICTION OVER PERSON 18 OR OLDER.

48.44 Jurisdiction over persons 18 or older. The court has exclusive jurisdiction over persons 18 or older in the case of contributing to the delinquency or neglect of a child under s. 48.45.

History: 1971 c. 213 s. 5; 1975 c. 39.

48.45 Contributing to the delinquency or neglect of children. (1) If in the hearing of a case of a child alleged to be delinquent or neglected, it appears that any person 18 or older has been guilty of contributing to, encouraging, or tending to cause by any act or omission, the delinquency or neglect of the child, the court may make orders with respect to the conduct of such person in his relationship to the child, including orders determining the ability of such person to provide for the maintenance or care of such child and directing when, how and where money for such maintenance or care shall be paid.

(2) No order to any person 18 or older pursuant to sub. (1) shall be entered until he has been given an opportunity to be heard upon the allegation against him and the contemplated order of the court. The court shall cause notice of the time, place and purpose of such hearing to be served on such person personally at least 10 days before the date of hearing. The procedure in such cases shall, as far as practicable, be the same as in other cases in the juvenile court, and shall otherwise be the procedure followed in courts of equity. Any person 18 or older who fails to comply with any order issued by a juvenile court pursuant to this section may be proceeded against for contempt of court, and if his conduct involves a crime, he may be proceeded against under the criminal law.

(3) If it appears at a juvenile court hearing that any person 18 or older has violated s. 947.15, the judge shall refer the record to the district

attorney for such criminal proceedings as may be warranted in the district attorney's judgment. This subsection does not prevent prosecution of violations of s. 947.15 without such prior reference by the judge to the district attorney, as in other criminal cases.

(4) An act or failure to act contributes to the delinquency or neglect of a child, although the child does not actually become neglected or delinquent, if the natural and probable consequences of that act or failure to act would be to cause the child to become delinquent or neglected.

REHEARING AND APPEAL

48.46 New evidence. A parent, guardian, legal custodian or next friend of any child whose status has been adjudicated by the juvenile court may at any time within one year of the entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication or disposition. Upon a showing that such evidence does exist, the court shall order a new hearing and make such disposition of the case as the facts and the best interests of the child warrant.

An affidavit by the mother that she consented under duress and one by her attorney as to what he expected to prove are not sufficient to reopen the case. *Schroud v. Milw. County Dept. of Pub. Welfare*, 53 W (2d) 650, 193 NW (2d) 671.

48.47 Appeal to circuit and supreme court. Any person aggrieved by an adjudication of the county court under this chapter and directly affected thereby has the right to appeal to the circuit court of the same county within 40 days of the entry of the order in the manner in which appeals are taken from judgments in civil actions. No undertaking shall be required on such appeal. The order of the county court shall stand, pending the determination of the appeal, but the circuit court may upon application stay such order. The appeal shall be on the record which the county court shall make and keep of the entire proceedings. Appeal from an order granting or denying an adoption under s. 879.27 and from any county court review under s. 48.64 (4) (c) shall be to the supreme court.

History: 1971 c. 40.

DEPARTMENT

48.48 Authority of department. The department shall have authority:

(1) To promote the enforcement of the laws relating to mentally defective, dependent, neglected and delinquent children and children born out of wedlock and to take the initiative in all matters involving the interests of such

children where adequate provision therefor is not made. This duty shall be discharged in co-operation with the juvenile courts, county agencies, licensed child welfare agencies and with individuals interested in the welfare of children.

(2) To assist in extending and strengthening child welfare services in co-operation with the United States children's bureau in conformity with the federal social security act and in co-operation with other agencies so that all children needing such services are reached;

(3) To accept legal custody of children transferred to it by the juvenile court under ss. 48.34 and 48.35;

(4) To provide appropriate care and training for children in its legal custody; including placing those children in licensed foster homes or contracting for care of them by licensed child welfare agencies;

(4m) To continue to provide appropriate care, training and services to any person who:

(a) Was at least 18 years of age on March 23, 1972;

(b) Is in legal custody of the department or a county agency established under ss. 48.56 and 48.57 on March 23, 1972;

(c) Is less than 21 years of age on June 29, 1974; and

(d) Is determined by the department to be in need of care and services designed to fit such person for gainful employment and has requested and consented to receive such aid.

(5) To provide for the moral and religious training of children in its legal custody according to the religious belief of the child or of his parents;

(6) To consent to emergency surgery under the direction of a licensed physician or surgeon for any child in its legal custody upon notification by a licensed physician or surgeon of the need for such surgery and if reasonable effort, compatible with the nature and time limitation of the emergency, has been made to secure the consent of the child's parent or guardian;

(7) To accept guardianship of children when appointed by the juvenile court;

(8) To place children under its guardianship for adoption;

(9) To license foster homes as provided in s. 48.66 for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county agencies;

(10) To license child welfare agencies and day care centers as provided in s. 48.66;

(11) When notified of the birth or expected birth of a child born or likely to be born out of wedlock, to see that the interests of the child are safeguarded, that steps are taken to establish its

paternity and that there is secured for the child, if possible, the care, support and education it would receive if legitimate.

(12) (a) To enter into an agreement to assist in the cost of care of a child after legal adoption when the department has determined that such assistance is necessary to assure the child's adoption. Agreements shall be made prior to legal adoption and only for children in the guardianship of the department or other agency authorized to place children for adoption. The amount paid shall not exceed the cost of foster home care.

(b) This subsection shall be administered by the department according to criteria, standards and review procedures which it shall establish.

(13) To establish rules for the payment of an allowance to children in its institutions and a cash grant to a child being discharged or released to aftercare from its institutions.

(14) To pay maintenance, tuition and related expenses from the appropriation under s. 20.435

(4) (b) for persons who when they reached 18 years of age were students regularly attending a school, college or university or regularly attending a course of vocational or technical training designed to fit them for gainful employment, and who when reaching such age were in legal custody of the department as a result of a judicial decision.

History: 1973 c 90, 333

48.49 Notification by juvenile court of transfer to department; information for department. (1) When the juvenile court transfers legal custody of a child to the department, the court shall immediately notify the department of such action. The court shall, in accordance with procedures established by the department, provide transportation for the child to a receiving center designated by the department or deliver the child to personnel of the department.

(2) The court and all other public agencies shall furnish the department on request all pertinent data in their possession regarding the child whose legal custody is transferred to the department.

48.50 Examination of children in legal custody of department. (1) The department shall examine all children whose legal custody is transferred to it by the court to determine the type of placement best suited to the child and, in the case of children who have violated a state law, to the protection of the public. This examination shall include an investigation of the personal and family history of the child and his environment and any physical or mental examinations considered necessary.

(2) In making this examination the department may use any facilities, public or private, which offer aid to it in the determination of the correct placement for the child.

48.51 Type of care. (1) Depending on the results of the examination of the child, the department may place the child in any of the appropriate facilities described in s. 48.52.

(2) In addition, if the child has been adjudged delinquent, the department may allow him his liberty under supervision either immediately or after a period in one of the facilities described in s. 48.52. If this is unsatisfactory in the judgment of the department, it may place the child in one of the facilities described in s. 48.52.

48.52 Facilities for care of children in legal custody of department. (1) FACILITIES MAINTAINED OR USED FOR CHILDREN. The department may maintain or use the following facilities for the care of children in its legal custody:

(a) Receiving homes to be used for the temporary care of children;

(b) Foster homes;

(c) Group homes;

(d) Institutions, facilities and services, including without limitation forestry or conservation camps for the training and treatment of children 12 years of age or older who have been adjudged delinquent;

(f) Other facilities deemed by the department to be appropriate for the child, except that no state funds may be used for the maintenance of a child in the home of a parent or relative eligible for aid under s. 49.19 if such funds would reduce federal funds to this state.

(2) USE OF OTHER FACILITIES. (a) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may also use other public facilities or contract for the use of private facilities for the care and treatment of children in its legal custody; but placement of children in private or public facilities not under its jurisdiction does not terminate the legal custody of the department. Removals to institutions for the mentally ill or developmentally disabled shall be made in accordance with ch. 51.

(b) Public facilities are required to accept and care for persons placed with them by the department in the same manner as they would be required to do had the legal custody of these persons been transferred by a court of competent jurisdiction. Nothing in this subsection shall be construed to require any public facility to serve the department inconsistently with its functions or with the laws and regulations governing their

activities; or to give the department authority to use any private facility without its consent.

(c) The department shall have the right to inspect all facilities it is using and to examine and consult with persons in its legal custody who have been placed in that facility.

(3) **PLACEMENT.** Nothing in this section shall preclude the placement of a child in any of the above facilities so long as he is under the age of 18, provided he is legally under sentence to the department under a provision of the criminal code.

(4) **COEDUCATIONAL PROGRAMS AND INSTITUTIONS.** The department may institute and maintain coeducational programs and institutions under this chapter.

History: 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90; 1975 c. 39, 430.

A juvenile in the custody of the department may not be transferred to an adult-serving penal institution. State ex rel Edwards v. McCauley, 50 W (2d) 597, 184 NW (2d) 908.

A detention home is not one of the other facilities. State ex rel Harris v. Larson, 64 W (2d) 521, 219 NW (2d) 335.

See note to 48.62, citing 63 Atty. Gen. 34

48.53 Duration of control over delinquents. (1) All children adjudged delinquent, whose legal custody has been transferred to the department, shall be discharged as soon as the department determines that there is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the child or for the protection of the public that the department retain legal custody.

(2) All children adjudged delinquent, whose legal custody has been transferred to the department, and who have not been discharged under sub. (1), shall be discharged when they reach the age of 18.

History: 1971 c. 213 s. 5; 1975 c. 39.

48.54 Records. (1) The department shall keep a complete record on each child in its legal custody. This record shall include the information received from the juvenile court, the date of reception, all available data on the personal and family history of the child, the results of all tests and examinations given the child, and a complete history of all placements of the child while in the legal custody of the department.

COUNTY CHILD WELFARE SERVICES

48.56 County child welfare services. (1) Each county shall provide child welfare services through the staff of one or more of the following agencies:

(a) A county welfare department authorized by the county board under s. 46.22 (5) (g) to provide child welfare services; or

(c) In counties with a population of 500,000 or more a county welfare department organized under s. 49.51.

(2) Each county shall require the agency furnishing child welfare services to employ personnel who devote all or part of their time to child welfare services. Whenever possible, this personnel shall have the qualifications required for state social workers under civil service law who perform similar types of duties.

(3) This section shall not apply to those counties which had child welfare services administered by the staff of the juvenile court prior to January 1, 1955.

History: 1975 c. 307.

48.57 Powers and duties of county agencies providing child welfare services.

(1) The county agency specified in s. 48.56 (1) to provide child welfare services shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board or donated by individuals or private organizations. It shall have authority:

(a) To investigate the conditions surrounding mentally defective, dependent, neglected and delinquent children and children born out of wedlock within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. This duty shall be discharged in cooperation with the juvenile court and with the public officers or boards legally responsible for the administration and enforcement of these laws;

(b) To accept legal custody of children transferred to it by the juvenile court under s. 48.34 or 48.35;

(c) To provide appropriate care and training for children in its legal custody, including placing those children in licensed foster homes in this state or contracting for care of them by licensed child welfare agencies;

(d) To provide for the moral and religious training of children in its legal custody according to the religious belief of the child or of his parents;

(e) If a county welfare department in a county with a population of 500,000 or more, to place children in a county children's home in the county pursuant to rules adopted by the board of public welfare of such county, to accept guardianship of children when appointed by the juvenile court, and to place children under its guardianship for adoption;

(f) To provide services to the juvenile court under s. 48.06;

(g) Upon request of the department to assume supervision of any juvenile still in the legal custody of the department;

(h) To contract with any parent or guardian or other person for the care and maintenance of any child;

(hm) If licensed by the department to do so, to accept guardianship of children when appointed by the juvenile court, and to place children under its guardianship for adoption;

(i) To license foster homes in the county in accordance with s. 48.75.

(2) In performing the functions specified in sub. (1) the county agency may avail itself of the co-operation of any individual or private agency or organization interested in the social welfare of children in the county.

This section does not authorize the department to place children in a detention home temporarily while permanent placement is sought. State ex rel. Harris v. Larson, 64 W (2d) 521, 219 NW (2d) 335.

48.58 County children's home. (1) Any existing county children's home may do any of the following:

(a) Accept legal custody of dependent or neglected children transferred to it by the children's court;

(b) Provide care for dependent or neglected children referred by the county welfare department;

(c) Provide temporary shelter care for dependent or neglected children.

(2) A county shall be reimbursed by the state for 50% of the allowable per capita cost of care of the children who are in a children's home under sub. (1) (a), (b) and (c). Reimbursement under sub. (1) (c) shall be limited to the first 30 days of care. Allowable cost shall be determined according to s. 46.037. Payment shall be made from the appropriation under s. 20.435 (4) (b).

History: 1973 c. 90; 1975 c. 39, 189, 224.

48.59 Examination and records. (1) The county agency shall investigate the personal and family history and environment of any child transferred to its legal custody and make any physical or mental examinations of the child considered necessary to determine the type of care necessary for the child. The county agency shall keep a complete record of the information received from the juvenile court, the date of reception, all available data on the personal and family history of the child, the results of all tests and examinations given the child; and a complete history of all placements of the child while in the legal custody of the county agency.

(2) The county agency shall report to the department, as the department shall request,

regarding children in legal custody or under supervision of the county agency.

CHILD WELFARE AGENCIES

48.60 Child welfare agencies licensed.

(1) No person shall receive children with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months' period for 4 or more such children at any one time unless he obtains a license to operate a child welfare agency from the department.

(2) This section does not include:

(a) A relative or guardian who provides care and maintenance for such children;

(b) A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation;

(c) A public agency;

(d) A hospital, maternity hospital, maternity home, nursing home or tuberculosis sanatorium licensed, approved or supervised by the department;

(e) A licensed foster home.

(f) Institutions for mentally deficient children, which institutions have a full-time child population of not less than 150 children and which are subject to examination as provided in s. 46.03(5).

(3) Before issuing any license to a child welfare agency under this section, the department shall review the need for the additional placement resources that would be made available by the licensing or relicensing of any child welfare agency after August 5, 1973 providing care authorized under s. 48.61 (3). The department shall not make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for such additional placement resources.

History: 1973 c. 90; 1975 c. 39.

48.61 Powers and duties of child welfare agencies. A child welfare agency shall have authority:

(1) To accept legal custody of children transferred to it by the juvenile court under ss. 48.34 and 48.35;

(2) To contract with any parent or guardian or other person for the supervision or care and maintenance of any child;

(3) To provide appropriate care and training for children in its legal custody and, if licensed to do so, to place children in licensed foster homes;

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(4) To provide for the moral and religious training of children in its legal custody according to the religious belief of the child or his parents;

(5) If licensed to do so, to accept guardianship of children when appointed by the juvenile court, and to place children under its guardianship for adoption;

(6) To provide services to the juvenile court under s. 48.07;

(7) To license foster homes in accordance with s. 48.75 if licensed to do so.

FOSTER HOMES

48.62 Foster homes licensed. (1) No person shall receive, with or without transfer of legal custody, any child to provide care and maintenance for that child unless he obtains a license to operate a foster home from the department or from a county agency or licensed child welfare agency as provided in s. 48.75.

(2) This section does not include a relative, as defined in s. 48.02 (12) or as specified in s. 49.19 (1) (a), or a guardian of a child who provides care and maintenance for the child.

Foster homes owned, operated or contracted for by the department or a county agency are immune from local zoning ordinances. Foster homes owned, operated or contracted for by licensed child welfare agencies are not immune. All family operated foster homes are subject to local zoning. Municipal foster home licensing ordinances are unenforceable. 63 Atty Gen 34.

48.63 Restrictions on independent placements. (1) No person, except the child's parent or guardian or the department, a county agency performing child welfare services under s. 48.56 (1), a child welfare agency licensed to place children in foster homes, or a court of record, may:

(a) Place a child or negotiate or act as intermediary for the placement of a child in a foster home; or

(b) Offer or hold himself out as able to place a child in a foster home.

(2) No parent or guardian, except a licensed child welfare agency or public agency authorized to place children for adoption, may place a child in a foster home for adoption without obtaining the written approval of the county court prior to placement, and no person shall receive a child into his home for adoption without such prior written approval for placement having been received from the county court. Every person appointed to furnish services to the court under ss. 48.06 and 48.07 is eligible to petition the county court for approval of a foster home for placement of a child. The court shall, before taking action to approve or disapprove, have an investigation of the facts and a report made by the department, a county agency performing child welfare services under s. 48.56, or a child

welfare agency licensed to place children in foster homes. Such report on the investigation for placement shall be filed with the county court within 30 days after entry of the court's order for such investigation unless the time therefor is extended by the court for good cause shown. If the court does not approve, it shall refer the matter to the juvenile court for appropriate action.

(3) The proper county for proceedings under this section is the county wherein a child is present.

48.64 Placement of children in foster homes. (1) **FOSTER HOME AGREEMENT.** If the department, a county agency specified in s.

48.56, a juvenile court, or a child welfare agency authorized to do so, places a child in a foster home, it shall enter into a written agreement with the head of such home, which agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. Where a child has been in the foster home for 6 months or more, the department or agency shall give the foster parents written notice of intent to remove the child, stating the reasons for such removal. The child may not be removed before completion of the hearing under sub. (4) (a), if requested, or 30 days from the receipt of the notice, whichever is later, unless the safety of the child requires it. If a child is removed from an adoptive placement, the foster parents shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

(2) **SUPERVISION OF FOSTER HOME PLACEMENT.** Every child in a foster home shall be under the supervision of a county agency, specified in s. 48.56, a child welfare agency authorized to place children in foster homes, or of the department.

(3) **NUMBER OF CHILDREN IN FOSTER HOME.** No more than 4 children may be placed in a foster home unless all are in the relationship to each other of brother or sister, or unless the department in accordance with its rules, adopted under s. 48.67 makes an exception.

(4) **ORDERS AFFECTING FOSTER PARENTS OR CHILDREN.** (a) Any decision or order issued by a division of the department of health and social services, a county welfare department or a child welfare agency affecting foster parents or the children involved may be appealed to the department of health and social services under fair hearing procedures established under department rules. The department shall, upon receipt of such petition, give the foster parents reasonable notice and opportunity for a fair

hearing. The department may make such additional investigation as it deems necessary. Notice of the hearing shall be given to the foster parents and to the division, the county department or child welfare agency. They shall be entitled to be represented at such hearing. At all hearings conducted under this subsection, the foster parents, or their representative, shall have an adequate opportunity, notwithstanding s. 48.78, to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. A continuance for a reasonable period of time shall be granted when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department and shall be available to the foster parents or their representative, at a place accessible to them, at any reasonable time. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in a departmental or agency action being appealed shall participate in the final administrative decision on such action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the foster parents, the division, the county department or the child welfare agency. The decision shall be binding on all parties concerned.

(b) Judicial review of the department's decision may be had as provided in ch. 227.

(c) The county court of the county where the child is shall have jurisdiction upon petition of any interested party over a child who has been placed in a foster home. The court may call a hearing, at which the foster parents and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of said agency involving foster placement and care of the child. The court shall determine the case so as to promote the best interests of the child.

History: 1971 c. 40; 1973 c. 328.

Cross Reference: See 48.47 for provision that appeals from county court review under sub. (4) are to the supreme court.

Revisor's Note, 1971: Another sub. (4) was created by ch. 388, laws of 1969. That sub. (4) provides for an appeal to the

department by a foster home operator. The sub. (4) created by ch. 216 provides for an appeal by the parent or child to the county court. Counsel for H & SS tells me that the 2 provisions do not conflict or cause any difficulty and that both provisions should be preserved as above renumbered [Bill 165-S]

DAY CARE CENTERS

48.65 Day care centers licensed. (1) No person shall for compensation provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day unless he obtains a license to operate a day care center from the department.

(2) This section does not include:

- (a) A relative or guardian of a child who provides care and supervision for the child; or
- (b) A public or parochial school, or the Young Men's Christian Association; or
- (c) A person employed to come to the home of the child's parent or guardian for less than 24 hours a day.

LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, AND DAY CARE CENTERS

48.66 Licensing duties of the department.

The department shall license and supervise child welfare agencies, as required by s. 48.60, foster homes, as required by s. 48.62, day care centers, as required by s. 48.65, and may license and supervise county departments of public welfare for the purposes stated in s. 48.43 (1) (am) in accordance with the procedures specified in ss. 48.67 to 48.74.

History: 1975 c. 307.

48.67 Rules governing child welfare agencies, day care centers, foster homes and county department of public welfare.

(1) The department shall prescribe rules establishing minimum requirements for the issuance of licenses to and establishing standards for the operation of child welfare agencies, day care centers, foster homes and county departments of public welfare. These rules shall be designed to protect and promote the health, safety and welfare of the children in the care of all licensees. The department shall consult with the department of industry, labor and human relations and the department of public instruction before prescribing these rules.

(2) The department shall prescribe application forms to be used by all applicants for licenses from it.

(3) The department shall prescribe the form and content of records to be kept and information to be reported by persons licensed by it.

History: 1975 c. 307.

48.68 Investigation of applicant; granting of license. After receipt of an application for a license, the department shall investigate to determine if the applicant meets all minimum requirements for a license adopted by the department under s. 48.67. Upon satisfactory completion of this investigation, the license shall be granted.

48.69 Provisional licenses. A provisional license for a period of 6 months may be issued to any child welfare agency, day care center or county department of public welfare whose services are needed, but which is temporarily unable to conform to all established minimum requirements. This provisional license may be renewed for 6-month periods up to 2 years.

History: 1975 c. 307.

48.70 Provisions of licenses. (1) GENERAL. Each license shall bear the name of the person licensed, describe the premises included and state the maximum number of children who can be received and their age and sex.

(2) SPECIAL PROVISIONS FOR CHILD WELFARE AGENCY LICENSES. Licenses to child welfare agencies shall also specify the kind of child welfare work the agency is authorized to undertake, whether it may accept guardianship of children, whether it may place children in foster homes, and if so, the area it is equipped to serve.

(4) SPECIAL PROVISIONS FOR COUNTY DEPARTMENTS OF PUBLIC WELFARE. Licenses to county departments of public welfare shall specify whether the department may accept guardianship of children and place such children for adoption.

History: 1973 c. 90; 1975 c. 307.

48.71 Expiration and revocation of licenses. (1) All licenses issued by the department shall be for any term not to exceed 2 years from the date of issuance. No license shall be transferable. Licenses may be revoked by the department because the licensee has substantially violated any provision of this chapter or of the rules of the department adopted pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license.

(2) The department shall give the licensee written notice of any revocation and of the grounds for the revocation. The written notice shall be given at least 30 days prior to any revocation and the revocation shall take place only if the violation remains substantially uncorrected at the end of the 30-day notice period.

History: 1973 c. 90.

48.72 Appeal procedure. Any person aggrieved by the department's refusal or failure to issue or renew a license or by its revocation of a license has the right to an administrative hearing provided for contested cases in ch. 227. Judicial review of the department's decision may be had as provided in ch. 227.

48.73 Inspection of licensees. The department may visit and inspect each child welfare agency, foster home and day care center licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license.

48.74 Authority of department to investigate alleged violations. Whenever the department is advised or has reason to believe that any person is violating any of the provisions of ss. 48.60, 48.62 or 48.65, it shall make an investigation to determine the facts. For the purposes of this investigation, it shall have authority to inspect the premises where the violation is alleged to occur. If it finds that the person is violating any of the specified sections, it may either issue a license if the person is qualified or may institute a prosecution under s. 48.76.

48.75 Foster homes licensed by county agencies and by child welfare agencies. (1) Child welfare agencies, if licensed to do so by the department, and county agencies, specified in s. 48.56 (1) to furnish child welfare services, may license foster homes under the rules adopted by the department under s. 48.67 governing the licensing of foster homes. All such licenses shall be for a term not to exceed one year from date of issuance, shall not be transferable, and may be revoked by the agency or by the department because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department adopted pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license. The licensee shall be given written notice of any revocation and the grounds therefor.

(2) Any foster home applicant or licensee of a county agency or a child welfare agency may, if aggrieved by the failure to issue or renew its license or by revocation of its license, appeal as provided in s. 48.72.

48.76 Penalties. Any person who violates s. 48.60, 48.62, 48.63 or 48.65 may be fined not more than \$500 or imprisoned not more than one year in county jail or both.

48.77 Injunction against violations. In addition to the penalties provided in s. 48.76, the

circuit courts shall have jurisdiction to prevent and restrain by injunction violations of s. 48.60, 48.62, 48.63 or 48.65. It shall be the duty of the district attorneys, upon request of the department, to institute action for such injunction under ch. 813.

History: Sup Ct Order, 67 W (2d) 773.

GENERAL PROVISIONS ON RECORDS

48.78 Confidentiality of records. Records kept or information received by the department, county agencies specified in s. 48.56, licensed child welfare agencies, licensed day care centers and licensed maternity hospitals regarding individuals in their care or legal custody shall not be open to inspection or their contents disclosed except by order of the court. This section does not apply to the confidential exchange of information between these agencies or other social welfare or law enforcement agencies regarding individuals in the care or legal custody of one of the agencies.

Since a juvenile has a constitutional right to both inspect and reply to a hearing examiner's report, 48.78 does not prevent a juvenile from having access to such a report. State ex rel. R. R. v. Schmidt, 63 W (2d) 82, 216 NW (2d) 18.

Exclusions of 48.78, Stats. 1969, relating to confidentiality of child welfare records apply to advisory committees but not to county welfare boards. The statute does not preclude release of non-identifying data to such committees. 59 Atty. Gen. 240.

COMMUNITY SERVICES

48.79 Powers of the department. The department shall have authority and power:

(1) To collect and to collaborate with other agencies in collecting statistics and information useful in determining the cause and amount of delinquency and crime in this state or in carrying out the powers and duties of the department.

(2) To render assistance to communities in their efforts to combat delinquency and social breakdown likely to cause delinquency and crime and assist them in setting up programs for co-ordinating the total community program, including the improvement of law enforcement.

(3) To assist schools in extending their particular contribution in locating and helping children vulnerable to delinquency and in improving their services to all youth.

(4) To assist communities in setting up recreational commissions and to assist them in extending and broadening recreational programs so as to reach all children.

(5) To assist in extending the local child care programs so as to reach all homes needing such help.

(6) To assist in recruiting and training voluntary leaders for youth-serving organizations.

(7) To assist localities in securing needed specialized services such as medical, psychiatric, psychological and social work services when existing agencies are not able to supply them.

(8) To assist localities in making surveys of needs and available resources.

(9) To assist in appraising the achievement of local programs.

(10) To serve in a general consultative capacity, acting as a clearing house, developing materials, arranging conferences and participating in public addresses and radio programs.

(11) To develop and maintain an enlightened public opinion in support of a program to control delinquency.

48.80 Municipalities may sponsor activities. (1) Any municipality is hereby authorized and empowered to sponsor the establishment and operation of any committee, agency or council for the purpose of co-ordinating and supplementing the activities of public and private agencies devoted in whole or in part to the welfare of youth therein. Any municipality may appropriate, raise and expend funds for the purpose of establishing and of providing an executive staff to such committees, agencies or councils; may levy taxes and appropriate money for recreation and welfare projects; and may also receive and expend moneys from the state or federal government or private persons for such purposes.

(2) No provision of this section shall be construed as vesting in any youth committee, council or agency any power, duty or function enjoined by law upon any municipal officer, board or department or as vesting in such committee, council or agency any supervisory or other authority over such officer, board or department.

(3) In this section municipality means a county, city, village or town.

ADOPTION OF MINORS

48.81 Who may be adopted. Any minor present within this state at the time the petition for adoption is filed may be adopted.

48.82 Who may adopt. The following persons are eligible to adopt a minor if they are residents of this state:

(1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the minor;

(2) An unmarried adult;

(3) When practicable, the petitioners shall be of the same religious faith as the natural parents of the person to be adopted. No person shall be denied the benefits of this chapter because of a

religious belief in the use of spiritual means of prayer for healing.

(5) Although otherwise qualified, no person shall be denied the benefits of this section because he is deaf, blind or has other physical handicaps.

48.83 Jurisdiction and venue. (1) The county court of the county where the child is shall, upon the filing of a petition for adoption of such child, have exclusive jurisdiction over such child which jurisdiction shall continue until such petition is withdrawn, denied or granted. Venue shall be in the county where the child is at the time of the filing of the petition.

(2) If the adoption is denied, the jurisdiction over the child shall immediately revert to the court which appointed the guardian.

History: 1975 c. 39

48.84 Persons required to consent to adoption. (1) No adoption of a minor may be ordered without the written consent of the following to the adoption of the minor by the petitioner:

(a) The parent or parents, if living, provided that consent shall not be required from one whose parental rights have been legally terminated; or

(b) The minor himself if he is 14 or older.

(2) (a) The consent required by sub. (1) (a) shall be given in writing before a judge of any court of record, unless the court orders otherwise, after the judge has explained to the parent that such consent is irrevocable, except as provided in s. 48.86, and has examined the parent and is satisfied that the parent gives his consent voluntarily. In the case of a minor parent, his minority shall not be grounds for revoking consent, but a guardian ad litem shall be appointed for him and his consent shall be effective only when concurred in by the written consent of the guardian ad litem.

(b) The consent of the minor required by sub. (1) (b) shall be given in writing before the county judge, unless the court orders otherwise.

(3) The consent of the father of a minor born out of wedlock and not subsequently legitimated or adopted shall be necessary unless his rights have been legally terminated.

(4) In the case of a minor brought to this state pursuant to the displaced persons act of 1948, as amended, a certification of the displaced persons commission or of the department stating that such child is available for adoption shall be in lieu of any further proof of death of parents, valid release by parents, termination of parental rights or other similar requirements.

History: 1973 c. 263.

See note to 48.42, citing *State ex rel. Lewis v. Lutheran Social Services*, 59 W (2d) 1, 207 NW (2d) 826.

There is no authority holding that in an adoption proceeding the grandparents accede to whatever rights the natural parents may have had. *Adoption of Randolph*, 68 W (2d) 64, 227 NW (2d) 634.

48.841 Persons required to file recommendation as to adoption. (1) No adoption of a minor may be ordered without the written recommendation, favorable or unfavorable, of the guardian of the minor, if there is one, as set forth in s. 48.85.

(2) If the guardian refuses or neglects to file its recommendation within the time specified in s. 48.85, the court may proceed as though the guardian had filed a favorable recommendation.

48.85 Recommendation of guardian. (1) At least 10 days prior to the hearing, the guardian shall file its recommendation with the court.

(2) The guardian's recommendation shall be presumed to be in the best interests of the child unless the fair preponderance of the credible evidence is to the contrary. If the guardian's recommendation is in opposition to the granting of the petition, the court shall take testimony as to whether or not the proposed adoption is in the best interests of the child.

(3) At the conclusion of the hearing, the court shall enter its order in accordance with s. 48.91 (3).

History: 1973 c. 263.

48.86 Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, to the person seeking to withdraw consent and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of an order of adoption renders any consent irrevocable.

48.87 Filing of consents. Written consents required by s. 48.84 shall be filed with the court at the time of the filing of the petition.

48.871 Filing of recommendation by guardian. In the case of a recommendation by a guardian, the guardian shall file with its recommendation satisfactory evidence of its authority to file such recommendation relative to the adoption of the minor. In the case where the parents' rights have been judicially terminated, this evidence shall be a certified copy of the order terminating their rights and appointing the guardian. In other cases of a guardian appointed

by a court, this evidence shall be a certified copy of the order appointing it guardian. In the case of a guardian having the authority to consent or file its recommendation under an instrument other than a court order, valid under the laws of another state, that instrument shall serve as evidence of the authority to consent or file its recommendation.

48.88 Notice of hearing; investigation. (1)

(a) Upon the filing of a petition, the court shall set a time and place for hearing the petition, allowing time for the investigation and report required by sub. (2), which must be received prior to the hearing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any; to the agency making the investigation, and to the department when its recommendation is required by s. 48.89.

(b) After a petition for adoption is filed the court may determine the placement of the child until the hearing on adoption is completed.

(2) (a) Upon the filing of a petition, the court shall order a licensed child welfare agency or a county agency specified in s. 48.56 to make an investigation of the environment and antecedents of the person to be adopted to ascertain whether the person is a proper subject for adoption and of the home of the petitioner to determine whether it is a suitable home. The court may request the department to perform such a study and the department may furnish such requested service. The agency making the investigation shall make a report to the court within 90 days of the entry of the order for hearing unless the time is reduced for good cause shown by the petitioner or extended by the court. The report shall be part of the record of the proceedings.

(b) The investigation and report required by par. (a) is not necessary where the guardian of the child whose recommendation is required files a favorable recommendation and such guardian is either the department, a licensed child welfare agency or a county welfare department authorized by s. 48.57 to accept guardianship of a child; but that agency shall file with the court a report on its investigation of the environment and antecedents of the person to be adopted and of the home of the petitioners.

(3) If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the court, raises a serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem for the minor whose adoption is proposed. The guardian ad litem may have witnesses subpoenaed and present proof at the hearing.

History: 1975 c. 39, 199, 307

48.89 Recommendation of the department. (1) The recommendation of the department is required for the adoption of the following minors:

(a) A minor born out of wedlock and not subsequently legitimated or adopted;

(b) A minor who has no living parents or whose parents have had their rights legally terminated;

(c) A nonresident minor;

(d) A minor whose nonresident parent has executed a written consent to the adoption, valid at the time of its execution.

(2) The department shall make its recommendation to the court within 90 days of the entry of the order for hearing unless the time is extended by the court. The recommendation shall be part of the record of the proceedings.

(3) The recommendation of the department shall not be required if the recommendation of that department, a licensed child welfare agency, a county welfare department or a county children's board authorized by s. 48.57 to accept guardianship of a child is required by s. 48.841, or if one of the petitioners is a stepparent.

History: 1973 c. 263

48.90 Preadoption residence. (1) No petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months, except where:

(a) One of the petitioners is related to the child by blood, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents; or

(b) The petitioner is related to the child as a stepparent; or

(c) The petition is accompanied by a written approval of the guardian.

(2) Where the placement of the child proposed to be adopted was in violation of s. 48.63 or 48.98, no petition shall be filed unless there is an affirmative showing that the petitioners have complied with the provisions of the section violated.

History: 1973 c. 263.

Once administrative proceedings have commenced under 48.64 and the person with whom the child had been placed is seeking a review of the removal order, a children's court has no jurisdiction of an attempted adoption. Adoption of Shawn, 65 W (2d) 190, 222 NW (2d) 139

48.91 Hearing; order. (1) The hearing may be in chambers unless an interested person objects. The petitioner and the minor to be adopted, if 14 or older, shall attend unless the court orders otherwise.

(2) In an adoption proceeding for a child born out of wedlock and not subsequently legitimated or adopted, the court shall establish whether the rights of any persons have been determined

under s. 48.425 or by a similar procedure in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed under s. 48.425 prior to any action on the petition for adoption.

(3) If after the hearing and a study of the report required by s. 48.88 and the recommendation required by s. 48.89, the court is satisfied that the necessary consents or recommendations have been filed and that the adoption is in the best interests of the child, the court shall make an order granting the adoption. The order may change the name of the minor to that requested by petitioners.

History: 1973 c. 263

Meaning of "best interests of the child" discussed Adoption of Tachick, 60 W (2d) 540, 210 NW (2d) 865.

48.911 Appeal in adoption proceedings. Notwithstanding the provisions of chs. 817 and 879, any appeal from an order in an adoption proceeding is limited to 40 days from the date of the entry of the order.

History: Sup. Ct. Order, 67 W (2d) 773

48.92 Effect of adoption. (1) After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents.

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and his natural parents, unless the natural parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist.

(3) Rights of inheritance by, from and through an adopted child are governed by s. 851.51.

(4) Nothing in this section shall be construed to abrogate the right of the department to make payments to adoptive families under s. 48.48 (12).

History: 1973 c. 90

A valid adoption of petitioner by his aunt would preclude his right to inherit as the son of his natural mother, although he would be entitled to inherit as a nephew. Estate of Komarr, 68 W (2d) 473, 228 NW (2d) 681.

48.93 Records closed. (1) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file. No person shall have access to such records except on order of the court for good cause shown. No person in charge of adoption records shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by the court.

(2) All correspondence and papers, relating to the investigation, which are not a part of the

court record, except those in the custody of agencies authorized to place children for adoption shall be transferred to the department and placed in its closed files.

48.94 New birth certificate. After entry of the order granting the adoption the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the new birth certificate. Whenever the parents by adoption request, or the adopting parent and his spouse who is the natural parent of the person adopted request, that the birth certificate for the person adopted be not changed, then the court shall so order. In such event no new birth certificate shall be filed by the state registrar of vital statistics, notwithstanding the provisions of s. 69.33 or any other law of this state.

48.95 Withdrawal or denial of petition. If the petition is withdrawn or denied, the court shall order the case transferred to the juvenile court for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the department, a licensed child welfare agency, a county department of public welfare in counties having a population of 500,000 or more, a county department of public welfare or a county children's board licensed for such purpose by the department, the minor shall remain in the legal custody of that department or agency.

48.96 Subsequent adoption. The adoption of an adopted person is authorized and, in that case, the references to parent and natural parent are to adoptive parent.

48.97 Foreign adoption orders. When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the state department or a county department authorized to make adoption placements has approved of the adoptive parents and adoptive home. A child whose adoption would otherwise be valid under this section may be readopted in accordance with this chapter if such readoption is necessary under federal law to permit the child to enter this country.

History: 1971 c. 187

MISCELLANEOUS PROVISIONS

48.98 Interstate placement of children.

(1) No person shall bring or cause to be brought or send or cause to be sent into this state or take, or cause to be taken, or send, or cause to be sent, out of this state any child for the purpose of placing such child in a foster home or of procuring his adoption, without first obtaining the consent of the department.

(2) Such consent by the department shall be given only upon the following conditions:

(a) Any person who brings or sends children into this state for the purpose of placing such children in foster homes or of procuring their adoption must file with the department a bond to the state of Wisconsin, approved by the department, in the penal sum of \$1,000, conditioned that he will not bring or send into this state any child who is incorrigible or unsound of mind or body and that he will remove any such child who becomes a public charge or who, in the opinion of the department, becomes a menace to the community prior to his adoption or becoming of legal age, and conditioned further that all placements shall be made under the same conditions as placements may be made by licensed child welfare agencies. The department may waive the bond herein provided for, whenever in the opinion of said department such waiver is warranted. This paragraph shall not apply to child welfare agencies licensed in this state and no bond shall be required from such agencies.

(b) Before any child is brought or sent into this state or taken from or sent out of this state for placement in a foster home, the person bringing, taking or sending such child must obtain a certificate from the department that such home is a suitable home for such child.

(c) The person bringing, taking or sending such child into or out of this state, shall make a report to the department, at least once each year and at such other times as the department may require, as to the location and well-being of such child, until he shall be 18 years of age or until he shall be legally adopted.

(3) The department may make all necessary rules for the enforcement of this section, not in conflict therewith, and all persons bringing, taking or sending children into or out of this state shall comply with all such rules.

48.981 Reports on abused or injured children.

(1) A physician or surgeon being of the opinion as specified in s. 905.04 (4) (e), or a nurse, hospital administrator, dentist, social worker or school administrator having reasonable cause to believe that a child brought to him or coming before him has had physical injury or

other abuse inflicted upon him by another, other than by accidental means, shall orally report the same and the facts and circumstances forming the opinion. The report shall be made immediately by telephone or otherwise, and followed by a report in writing to a county child welfare agency specified in s. 48.56 (1), the sheriff of the county or the city police department. The recipient of the report shall notify the other receivers of reports within 48 hours. When the recipient of the report is the sheriff of the county or city police department, he shall make an investigation consistent with the facts and circumstances described in the report and take whatever emergency action is necessary for the protection of the child. If the sheriff or city police department determines that legal action is necessary he shall refer the case to the district attorney for criminal prosecution. The county child welfare agency specified in s. 48.56 (1) shall investigate each report and act in accordance with its powers and duties as set forth in s. 48.57.

(2) Anyone, in good faith, participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall in so doing be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(3) Anyone knowingly and wilfully violating this section by failing to file a report as required, may be fined not more than \$100 or imprisoned not more than 6 months or both.

History: Sup. Ct. Order, 59 W (2d) R3

48.985 Legal disability of minors removed when borrowing money for educational purposes.

(1) Minors who enter into contracts for loans to defray the expenses of attending any college or university shall, if they are at least 18 years of age, have full legal capacity to act in their own behalf in the matter of such contracts, and with respect thereto shall have all the rights, powers and privileges and be subject to the obligations of persons of full age.

(2) To come under this section, the text of any such loan contract shall state that the loan is to be used only to further the education of the recipient.

48.99 Earnings of self-supporting minors.

During any time when a parent of a minor neglects or refuses to provide for his support, or for his support and education, the earnings of such minor shall be his sole property as against such parent or any creditor of such parent.

48.991 Interstate compact on juveniles.

The following compact, by and between the state of Wisconsin and any other state which has or

shall hereafter ratify or legally join in the same, is ratified and approved:

INTERSTATE COMPACT ON JUVENILES.

The contracting states solemnly agree:

Article I

Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) co-operative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake co-operatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II

Existing Rights and Remedies.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III

Definitions.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state,

territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV

Return of Runaways.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to

legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being

returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to legal custody of such minor.

Article V

Return of Escapees and Absconders.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive

him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

Article VI

Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV (a) or of Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII

Co-operative Supervision of Probationers and Parolees.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the

sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII

Responsibility for Costs.

(a) That the provision of Articles IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this compact.

Article IX

Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X

Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters

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and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

Article XI**Acceptance of Federal and Other Aid.**

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII**Compact Administrators.**

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII**Execution of Compact.**

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV**Renunciation.**

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the 6 months' renunciation notice of the present Article.

Article XV**Severability.**

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or

circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Cross Reference: See appendix for a list of states which have ratified this compact.

48.992 Definitions. As used in the interstate compact on juveniles, the following words and phrases have the following meanings as to this state:

(1) "Executive authority" means the compact administrator.

(2) (a) The "appropriate court" of this state to issue a requisition under Article IV of the compact is the juvenile court of the county of the petitioner's residence, or, if the petitioner is a child welfare agency, the juvenile court of the county where it has its principal office, or, if the petitioner is the department, any juvenile court in the state.

(b) The "appropriate court" of this state to receive a requisition under Article IV or V of the compact is the juvenile court of the county where the juvenile is located.

48.993 Juvenile compact administrator.

(1) Pursuant to the interstate compact on juveniles, the governor may designate an officer or employe of the department of health and social services to be the compact administrator, who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. He shall serve subject to the pleasure of the governor. Whenever there is a vacancy in the office of compact administrator or in the case of his absence or disability, his functions shall be performed by the secretary of health and social services, or other employe designated by the secretary of the department. The compact administrator may cooperate with all departments, agencies and officers of and in the government of this state and its political subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state.

(2) The compact administrator shall determine for this state whether to receive juvenile probationers and parolees of other states pursuant to Article VII of the interstate compact on juveniles and shall arrange for the supervision of each such probationer or parolee so received, either by the department or by a person appointed to perform supervision service for the juvenile court of the county where the juvenile is to reside, whichever is more convenient. Such

persons shall in all such cases make periodic reports to the compact administrator regarding the conduct and progress of such juveniles.

48.994 Supplementary agreements. The department may enter into supplementary agreements with appropriate officials of other states pursuant to Article X of the interstate compact on juveniles. In the event that such supplementary agreement requires or contemplates the use of any institution or facility of this state or the provision of any service by this state, said supplementary agreement shall have no effect until approved by the department or agency under whose jurisdiction said institution or facility is operated or which shall be charged with the rendering of such service.

48.995 Financial arrangements. The expense of returning juveniles to this state pursuant to the interstate compact on juveniles shall be paid as follows:

(1) In the case of a runaway under Article IV, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he is able to do so, shall order that he pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of said expense as the court finds he is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he may be proceeded against for contempt.

(2) In the case of an escapee or absconder under Article V or Article VI, if the juvenile is in the legal custody of the department it shall bear the expense of his return; otherwise the appropriate court shall, on petition of the person entitled to his custody or charged with his supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the

juvenile, for his actual and necessary expenses. In this subsection "appropriate court" means the juvenile court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state under Article VII of the compact, then the juvenile court of the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition under Article VI, the person entitled to his legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns such juvenile; but if he is financially unable to pay all the expenses he may petition the juvenile court of the county of the petitioner's residence for an order arranging for the transportation as provided in sub. (1). The court shall inquire summarily into the financial ability of the petitioner and, if it finds he is unable to bear any or all of the expense, the court shall arrange for such transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for his actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of said expense as the court finds he is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he may be proceeded against for contempt.

48.996 Fees. Any judge of this state who appoints counsel or a guardian ad litem pursuant to the provisions of the interstate compact on juveniles may, in his discretion, allow a reasonable fee to be paid by the county on order of the court.

48.997 Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its political subdivisions shall enforce the interstate compact on juveniles and shall do all things appropriate to the effectuation of its purposes which may be within their respective jurisdictions.