

CHAPTER 48

CHILDREN'S CODE

	SUBCHAPTER I	48 28	Failure to obey summons; capias
	GENERAL PROVISIONS	48 29	Substitution of judge
48.01	Title and legislative purpose.	48 293	Discovery
48.02	Definitions	48 295	Physical, psychological, mental or developmental examination
48.023	Guardianship	48 297	Motions before trial
48.025	Declaration of paternal interest in matters affecting children	48 299	Procedures at hearings
48.027	Child custody jurisdiction.	48 30	Plea hearing
48.028	Custody of Indian children	48 305	Hearing upon the involuntary removal of a child.
	SUBCHAPTER II	48 31	Fact-finding hearing
	ORGANIZATION OF COURT	48 315	Delays, continuances and extensions.
48.03	Time and place of court; absence or disability of judge; court of record	48 317	Jeopardy
48.035	Court; Menominee and Shawano counties.	48 32	Consent decree.
48.04	Employees of court		SUBCHAPTER VI
48.06	Services for court		DISPOSITION
48.065	Juvenile court commissioners	48 33	Court reports.
48.067	Powers and duties of intake workers.	48 331	Court reports; effect on victim.
48.069	Powers and duties of disposition staff	48 335	Dispositional hearings.
48.07	Additional sources of court services	48 34	Disposition of child adjudged delinquent.
48.08	Duties of person furnishing services to court.	48 343	Disposition of child adjudged to have violated a civil law or an ordinance.
48.09	Representation of the interests of the public	48 344	Disposition; intoxicating liquor and beer violations.
48.10	Power of the judge to act as intake worker	48 345	Disposition of child adjudged in need of protection or services
48.11	Advisory board.	48 35	Effect of judgment and disposition
	SUBCHAPTER III	48 355	Dispositional orders.
	JURISDICTION	48 356	Duty of court to warn.
48.12	Jurisdiction over children alleged to be delinquent.	48 357	Change in placement
48.125	Jurisdiction over children alleged to have violated civil laws or ordinances.	48 36	Payment for services
48.13	Jurisdiction over children alleged to be in need of protection or services.	48 363	Revision of dispositional orders.
48.135	Referral of children to proceedings under chapter 51 or 55.	48 365	Extension of orders
48.14	Jurisdiction over other matters relating to children.	48 37	Costs
48.15	Jurisdiction of other courts to determine legal custody.	48 373	Medical authorization.
48.17	Jurisdiction over traffic and boating, civil law and ordinance violations		SUBCHAPTER VII
48.18	Jurisdiction for criminal proceedings for children 16 or older; waiver hearing		PERMANENCY PLANNING; RECORDS
48.185	Venue	48 38	Permanency planning
	SUBCHAPTER IV	48 39	Disposition by court bars criminal proceeding
	HOLDING A CHILD IN CUSTODY	48 396	Records.
48.19	Taking a child into custody.		SUBCHAPTER VIII
48.20	Release or delivery from custody		TERMINATION OF PARENTAL RIGHTS
48.205	Criteria for holding a child in physical custody	48 40	Definitions
48.207	Places where a child may be held in nonsecure custody.	48 41	Voluntary consent to termination of parental rights
48.208	Criteria for holding a child in a secure detention facility.	48 415	Grounds for involuntary termination of parental rights
48.209	Criteria for holding a child in a county jail	48 42	Procedure
48.21	Hearing for child in custody	48 422	Hearing on the petition.
48.22	Establishment of secure detention facilities and shelter care facilities.	48 423	Rights of persons alleging paternity.
48.225	State-wide plan for detention homes	48 424	Fact-finding hearing
48.227	Runaway homes.	48 425	Court report by an agency.
48.23	Right to counsel.	48 426	Standard and factors
48.235	Guardian ad litem	48 427	Dispositions.
48.237	Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter	48 428	Sustaining care.
	SUBCHAPTER V	48 43	Court orders; contents and effect
	PROCEDURE	48 432	Access to medical information.
48.24	Receipt of jurisdictional information; intake inquiry.	48 433	Access to identifying information about parents.
48.243	Basic rights: duty of intake worker.	48 435	Custody of children
48.245	Informal disposition.		SUBCHAPTER IX
48.25	Petition: authorization to file		JURISDICTION OVER PERSON 18 OR OLDER
48.255	Petition; form and content.	48 44	Jurisdiction over persons 18 or older
48.263	Amendment of petition.	48 45	Contributing to the adverse condition of children.
48.27	Notice; summons.		SUBCHAPTER X
48.273	Service of summons or notice; expense.		REHEARING AND APPEAL
48.275	Parents' contribution to cost of court and legal services.	48 46	New evidence.
		48 47	Appeal.
			SUBCHAPTER XI
			DEPARTMENT
		48 48	Authority of department.
		48 49	Notification by court of transfer to department; information for department.
		48 50	Examination of children in legal custody of department.

48.52	Facilities for care of children in care of department		
48.53	Duration of control over delinquents.	48.78	CONFIDENTIALITY OF RECORDS
48.54	Records		
48.55	State adoption information exchange		
	SUBCHAPTER XII	48.79	COMMUNITY SERVICES
	COUNTY CHILD WELFARE SERVICES	48.80	Municipalities may sponsor activities.
48.56	County child welfare services		
48.57	Powers and duties of county agencies providing child welfare services	48.81	Who may be adopted
48.58	County children's home in populous counties.	48.82	Who may adopt.
48.59	Examination and records.	48.83	Jurisdiction and venue.
	SUBCHAPTER XIII	48.833	Placement of children for adoption by agencies
	CHILD WELFARE AGENCIES	48.835	Placement of children with relatives for adoption.
48.60	Child welfare agencies licensed.	48.837	Placement of children with nonrelatives for adoption.
48.61	Powers and duties of child welfare agencies	48.839	Adoption of foreign children.
	SUBCHAPTER XIV	48.841	Persons required to file recommendation as to adoption
	FOSTER HOMES	48.85	Recommendation of guardian
48.62	Licensing of foster homes	48.871	Filing of recommendation by guardian
48.625	Licensing of group homes	48.88	Notice of hearing; investigation
48.627	Foster parent insurance	48.89	Recommendation of the department.
48.63	Restrictions on placements.	48.90	Filing of adoption petition; preadoption residence.
48.64	Placement of children in foster homes and group homes.	48.91	Hearing; order.
	SUBCHAPTER XV	48.911	Appeal in adoption proceedings
	DAY CARE PROVIDERS	48.92	Effect of adoption.
48.65	Day care centers licensed	48.93	Records closed
48.651	Certification of day care providers.	48.94	New birth certificate.
48.653	Information for day care providers.	48.95	Withdrawal or denial of petition.
	SUBCHAPTER XVI	48.96	Subsequent adoption.
	LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES AND DAY CARE CENTERS	48.97	Adoption orders of other jurisdictions
48.66	Licensing duties of the department	48.975	Subsidized adoption.
48.67	Rules governing child welfare agencies, day care centers, foster homes, group homes, shelter care facilities and county departments of social services or public welfare		
48.675	Foster care education program.		
48.68	Investigation of applicant; granting of license	48.98	Interstate placement of children
48.69	Provisional licenses.	48.981	Abused or neglected children
48.70	Provisions of licenses.	48.982	Child abuse and neglect prevention board.
48.71	Expiration and revocation of licenses	48.985	Legal disability of minors removed when borrowing money for educational purposes
48.72	Appeal procedure.	48.987	Earnings of self-supporting minors
48.73	Inspection of licensees	48.988	Interstate compact on the placement of children
48.74	Authority of department to investigate alleged violations.	48.989	Interstate compact on the placement of children: additional procedure.
48.745	Formal complaints regarding child welfare agencies and group homes	48.991	Interstate compact on juveniles.
48.75	Foster homes licensed by county agencies and by child welfare agencies.	48.992	Definitions
48.76	Penalties	48.993	Juvenile compact administrator.
48.77	Injunction against violations	48.994	Supplementary agreements
		48.995	Financial arrangements.
		48.996	Fees.
		48.997	Responsibilities of state departments, agencies and officers.
			SUBCHAPTER XVII
			GENERAL PROVISIONS ON RECORDS
			Confidentiality of records.
			SUBCHAPTER XVIII
			COMMUNITY SERVICES
			Powers of the department
			Municipalities may sponsor activities.
			SUBCHAPTER XIX
			ADOPTION OF MINORS
			Who may be adopted
			Who may adopt.
			Jurisdiction and venue.
			Placement of children for adoption by agencies
			Placement of children with relatives for adoption.
			Placement of children with nonrelatives for adoption.
			Adoption of foreign children.
			Persons required to file recommendation as to adoption
			Recommendation of guardian
			Filing of recommendation by guardian
			Notice of hearing; investigation
			Recommendation of the department.
			Filing of adoption petition; preadoption residence.
			Hearing; order.
			Appeal in adoption proceedings
			Effect of adoption.
			Records closed
			New birth certificate.
			Withdrawal or denial of petition.
			Subsequent adoption.
			Adoption orders of other jurisdictions
			Subsidized adoption.
			SUBCHAPTER XX
			MISCELLANEOUS PROVISIONS
			Interstate placement of children
			Abused or neglected children
			Child abuse and neglect prevention board.
			Legal disability of minors removed when borrowing money for educational purposes
			Earnings of self-supporting minors
			Interstate compact on the placement of children
			Interstate compact on the placement of children: additional procedure.
			Interstate compact on juveniles.
			Definitions
			Juvenile compact administrator.
			Supplementary agreements
			Financial arrangements.
			Fees.
			Responsibilities of state departments, agencies and officers.

SUBCHAPTER I

GENERAL PROVISIONS

48.01 Title and legislative purpose. (1) This chapter may be cited as "The Children's Code". This chapter shall be interpreted to effectuate the following express legislative purposes:

(a) To provide judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety.

(b) To provide for the care, protection and wholesome mental and physical development of children, preserving the unity of the family whenever possible.

(c) Consistent with the protection of the public interest, to remove from children com-

mitting delinquent acts the consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation.

(d) To divert children from the juvenile justice system to the extent this is consistent with protection of children and the public safety.

(e) To respond to children's needs for care and treatment through community-based programs and to keep children in their homes whenever possible.

(f) To assure that children pending adoptive homes will be placed in the best homes available and protected from adoption by persons unfit to have responsibility for raising children.

(g) To provide children in the state with permanent and stable family relationships. The courts and agencies responsible for child welfare should assist parents in changing any circumstances in the home which might harm the

child or which may require the child to be placed outside the home.

(2) This chapter shall be liberally construed to effect the objectives contained in this section. 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, the interest of the person or persons with whom the child has been placed for adoption and the interests of the public.

History: 1977 c. 354; 1979 c. 330; 1981 c. 81.
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.

Jurisdictional questions relating to Indian child welfare act discussed. 70 Atty Gen 237.

See note to 48.48, citing Roe v. Borup, 500 F Supp. 127 (1980).

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

The Indian child welfare act—tribal self-determination through participation in child custody proceedings. 1979 WLR 1202.

48.02 Definitions. In this chapter, unless otherwise defined:

(1) "Adult" means a person who is 18 years of age or older.

(2) "Child" means a person who is less than 18 years of age.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter.

(3) "Court intake worker" means any person designated to provide intake services under s. 48.067.

(3m) "Delinquent" means a child who is less than 18 years of age and 12 years of age or older who has violated any state or federal criminal law, except as provided in ss. 48.17 and 48.18.

(4) "Department" means the department of health and social services.

(5) "Developmentally disabled" means having a developmental disability, as defined in s. 51.01 (5).

(5m) "Foreign jurisdiction" means a jurisdiction outside of the United States.

(6) "Foster home" means any facility operated by a person required to be licensed by s. 48.62 that provides care and maintenance for no more than 4 children unless all children are siblings.

(7) "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children.

(8) "Guardian" means the person named by the court having the duty and authority of guardianship.

(9) "Guardian ad litem" means a lawyer admitted to practice in this state who is appointed to protect the interest of the child or an incompetent in a particular court proceeding.

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities and the provisions of any court order.

(12m) "Nonidentifying social history information" means information about a person's birth parent that may aid the person in establishing a sense of identity. "Nonidentifying social history information" may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

- (a) Age at the time of the person's birth.
- (b) Nationality.
- (c) Race.
- (d) Education.
- (e) General physical appearance.
- (f) Talents, hobbies and special interests.
- (h) Reason for placing the child for adoption or for the termination of parental rights.
- (i) Religion.
- (k) Family history.
- (m) Personality traits of each parent.

(13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, "parent" includes a person adjudged in a judicial proceeding to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(15) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle or aunt. This relationship may be by consanguinity or direct affinity.

(16) "Secure detention facility" means a locked facility approved by the department under s. 46.16 for the secure, temporary holding in custody of children.

(17) "Shelter care facility" means a non-secure place of temporary care and physical custody for children, licensed by the department under s. 48.66.

(18) "Trial" means a fact-finding hearing to determine jurisdiction.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471

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

48.023 Guardianship. A person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

(1) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license

(2) The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by this chapter.

(3) The right and duty of reasonable visitation of the child

(4) The rights and responsibilities of legal custody except when legal custody has been vested in another person.

History: 1977 c. 354.

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 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 father's rights under subch. VIII. 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; 1979 c. 330; 1981 c. 359; 1983 a. 447.

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

48.028 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

History: 1981 c. 81.

SUBCHAPTER II

ORGANIZATION OF COURT

48.03 Time and place of court; absence or disability of judge; court of record. (1) The judge of a court assigned to exercise jurisdiction under this chapter shall set apart a time and place to hold court on juvenile matters.

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which elected, the judge shall receive expenses as provided under s. 753.073.

History: 1971 c. 46; 1977 c. 187 s. 135; 1977 c. 273, 449.

48.035 Court; Menominee and Shawano counties. Menominee county is attached to Shawano county for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and the office and functions of the judge of court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter of the circuit court for Menominee and Shawano counties shall serve in both coun-

ties. The county boards of Menominee county and Shawano county shall enter into an agreement on administration of this section and the prorating of expenditures involved, and for such purposes the county board of supervisors of Menominee county may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief judge of the judicial administrative district shall make the determination.

History: 1977 c. 449.

48.04 Employes of court. (1) If the county contains one or more cities of the 2nd or 3rd class, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, may appoint, by an instrument in writing, filed with the county clerk, a clerk of court for juvenile matters and such deputies as may be needed, who shall perform the duties of clerk and reporter of the court as directed by the judges. The clerk and deputies shall take and file the official oath and shall receive such salary as the county board determines.

History: 1977 c. 354, 449.

48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. 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) (a). The director is the chief administrative officer of the center and of the intake and probation sections and secure detention facilities of the center except as otherwise provided in this subsection. The director is charged with administration of the personnel and services of the sections and of the secure detention facilities, and is responsible for supervising both the operation of the physical plant and the maintenance and improvement of the buildings and grounds of the center. The center shall include investigative services for all children alleged to be in need of protection or services to be provided by the county department of social services, 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 the cases.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for juvenile matters and the director shall be charged with executing the 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 to the court.

3. The county board of supervisors shall develop policies and establish necessary rules for the management and administration of the nonjudicial operations of the children's court center. The director of the center shall report and is responsible to the director of the department that administers the health and human services programs for the execution of all nonjudicial operational policies and rules governing the center, including activities of probation officers whenever they are not performing services for the court. The director of the center is also responsible for the preparation and submission to the county board of supervisors of the annual budget for the center except for the judicial functions or responsibilities which are delegated by law to the judge or judges and clerk of circuit court. The county board of supervisors 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. The county board of supervisors also has the authority to investigate, arbitrate and resolve any conflict in the administration of the center as between judicial and nonjudicial operational policy and rules. The county board of supervisors does not have authority and may not assert jurisdiction over the disposition of any case or child after a written order is made under s. 48.21 or if a petition is filed under s. 48.25. All personnel of the intake and probation sections and of the secure detention facilities 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 in this paragraph.

(am) All intake workers beginning employment after May 15, 1980 shall have such qualifications as are required to perform entry level social work in county departments of social services and shall have successfully completed 30 hours of intake training prior to the completion of the first 6 months of employment in the position.

(b) Notwithstanding par. (a), the county board of supervisors may institute changes in the administration of services to the children's court center in order to qualify for the maximum amount of federal and state aid as provided in sub. (4) and s. 49.52.

(2) COUNTIES WITH A POPULATION UNDER 500,000. In counties having less than 500,000 population, the county board of supervisors shall authorize the county social services department or court or both to provide intake services required by s. 48.067 and agency staff needed to carry out the objectives and provisions of this chapter under s. 48.069. Intake services shall be provided by employees of the court or county social services department and may not be subcontracted to other individuals or agencies, except any county which had intake services subcontracted from the county sheriff's department on April 1, 1980, may continue to subcontract intake services from the county sheriff's department. All intake workers beginning employment after May 15, 1980 shall have those qualifications as are required to perform entry level social work in a county department of social services and shall have successfully completed 30 hours of intake training prior to the completion of the first 6 months of employment in the position. All such workers shall be governed in their intake work, including their responsibilities for recommending the filing of a petition and entering into an informal disposition, by general written policies which shall be formulated by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(3) INTAKE SERVICES. The court or agency responsible for providing intake services under s. 48.067 shall specify one or more persons to provide intake services. If there is more than one such worker, one of the workers shall be designated as chief worker and shall supervise other workers.

(4) 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, except as provided in s. 46.26. Counties having a population of less than 500,000 may use funds received under ss. 46.26 and 49.52 (1) (d), including county or federal revenue sharing funds allocated to match funds received under s. 49.52 (1) (d), for the cost of providing court attached intake services in amounts not to exceed 50% of the cost of providing court attached intake services or \$30,000 per county per calendar year, whichever is less.

History: 1971 c. 125; 1975 c. 39, 199, 302, 307, 422; 1977 c. 271; 1977 c. 354 ss. 10 to 14, 101; 1977 c. 447, 449; 1979 c. 34, 300; 1981 c. 20 s. 2202 (20) (c); 1981 c. 93 s. 186; 1981 c. 314, 329; 1983 a. 239.

48.065 Juvenile court commissioners. (1)

The board of supervisors of any county may authorize the chief judge of the judicial administrative district to appoint one or more part-time or full-time juvenile court commissioners who shall serve at the discretion of the chief judge. A juvenile court commissioner shall be licensed to practice law in this state and shall have been so licensed for at least 2 years immediately prior to appointment and shall have a demonstrated interest in the welfare of children. Law clerks, bailiffs and deputies shall be assigned to the court commissioner at the discretion of the chief judge.

(2) Under this chapter a juvenile court commissioner, if authorized to do so by a judge assigned to exercise jurisdiction under this chapter, may:

- (a) Issue summonses.
- (b) Conduct hearings under s. 48.21 and thereafter order a child held in or released from custody.
- (d) Conduct plea hearings.
- (e) Enter into consent decrees.
- (f) Conduct prehearing conferences.
- (g) Conduct all proceedings on petitions or citations under s. 48.125.
- (h) Perform such other duties, not in conflict with this chapter, as the judge assigned to exercise jurisdiction under this chapter may direct.

(3) The juvenile court commissioner may not:

- (a) Conduct waiver hearings under s. 48.18.
- (b) Conduct fact-finding or dispositional hearings except petitions or citations under s. 48.125.
- (c) Make dispositions other than approving consent decrees.
- (d) Conduct hearings for the termination of parental rights or for adoptions.
- (e) Make changes in placements of children, or revisions or extensions of dispositional orders, except pursuant to petitions or citations under s. 48.125.

(4) When acting officially, the juvenile court commissioner shall sit at the courthouse or the usual court facility for juvenile matters. Any decision of the juvenile court commissioner shall be reviewed by the judge assigned to exercise jurisdiction under this chapter upon the request of any interested party.

History: 1977 c. 354, 449; 1979 c. 300, 331, 355, 359; 1981 c. 314.

48.067 Powers and duties of intake workers.

To carry out the objectives and provisions of this chapter but subject to its limitations, intake workers shall:

- (1) Provide intake services 24 hours a day, 7 days a week, for the purpose of screening chil-

48.067 CHILDREN'S CODE

1126

dren taken into custody and not released under s. 48.20 (2);

(2) Interview, unless impossible, any child who is taken into physical custody and not released, and where appropriate interview other available concerned parties. If the child cannot be interviewed, the intake worker shall consult with the child's parent or a responsible adult. No child may be placed in a secure detention facility unless and until he or she has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the child is or the hour is unreasonable, as defined by written court intake rules, the intake worker may, if the child meets the criteria under s. 48.208, authorize the secure holding of the child while the intake worker is enroute to the in-person interview.

(3) Determine whether the child shall be held under s. 48.205 and such policies as the judge shall promulgate under s. 48.06 (1) or (2);

(4) If the child is not released, determine where the child shall be held;

(5) Provide crisis counseling during the intake process when such counseling appears to be necessary;

(6) Receive referral information, conduct intake inquiries, make recommendations as to whether a petition should be filed, and enter into informal dispositions under such policies as the chief judge of the judicial administrative district promulgates under s. 48.06 (1) or (2);

(7) Make referrals of cases to other agencies if their assistance appears to be needed or desirable;

(8) Make interim recommendations to the court concerning children awaiting final disposition under s. 48.355; and

(9) Perform any other functions ordered by the court, and assist the court or chief judge of the judicial administrative district in developing written policies or carrying out its other duties when the court or chief judge so requests.

History: 1977 c. 354, 449; 1979 c. 300

48.069 Powers and duties of disposition staff. (1) The staff of the department, the court or a county department of public welfare or social services, or a licensed child welfare agency designated by the court to carry out the objectives and provisions of this chapter shall:

(a) Supervise and assist a child pursuant to informal dispositions, a consent decree or order of the court.

(b) Offer family counseling.

(c) Make an affirmative effort to obtain necessary or desired services for the child and

the child's family and investigate and develop resources toward that end.

(d) Prepare reports for the court recommending a plan of rehabilitation, treatment and care.

(e) Perform any other functions consistent with this chapter which are ordered by the court.

(2) Licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested.

(3) A court or county social services agency responsible for disposition staff may agree with the court or county social services agency responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

(4) Disposition staff employed to perform the duties specified in sub. (1) after November 18, 1978 shall have the qualifications required under the county merit system.

History: 1977 c. 354; 1979 c. 300.

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 after January 1, 1980, the department shall provide, from the appropriation under s. 20.435 (4) (km), 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 and only if s. 46.26 does not apply.

(2) LICENSED CHILD WELFARE AGENCY. The court may request the services of a child welfare agency licensed under s. 48.60 in accordance with procedures established by that agency. The 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 expenses incurred in the performance of duties for the court.

(3) DEPARTMENT OF SOCIAL SERVICES IN POPULOUS COUNTIES. In counties having a population of 500,000 or more, the director of the department of social services may be ordered by the court to provide services for furnishing emergency shelter care to any child whose need therefor, either by reason of need of protection

and services or delinquency, is determined by the intake worker under s. 48.205. The court may authorize the director to appoint members of the director's department to furnish emergency shelter care services for the child. The emergency shelter care may be provided as specified in s. 48.207.

History: 1975 c. 39; 1977 c. 271, 354, 447; 1979 c. 34; 1981 c. 314 s. 146; 1983 a. 27 s. 2202 (20)

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) Any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 and 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking children into physical custody where the child comes voluntarily or is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

(3) In addition to the law enforcement authority specified in sub. (2), the superintendent of a juvenile correctional institution and personnel designated by the superintendent of the juvenile correctional institution have the power of law enforcement authorities to take a child into physical custody when they are in prompt pursuit of a child who has run away from a secured correctional facility. The child may be returned directly to the secured correctional facility and shall have a hearing regarding placement in a disciplinary cottage or in disciplinary status in accordance with ch. 227.

History: 1975 c. 302, 421; 1977 c. 354; 1979 c. 300

48.09 Representation of the interests of the public. The interests of the public shall be represented in proceedings under this chapter as follows:

(1) By the district attorney, in any matter arising under s. 48.12.

(2) By the district attorney or, if designated by the county board, by the corporation counsel, in any matter concerning a civil law violation arising under s. 48.125.

(3) By the city attorney, in any matter concerning a city ordinance violation arising under s. 48.125.

(4) By any appropriate person designated by the county board in any matter concerning a

noncity ordinance violation arising under s. 48.125.

(5) By the district attorney or, if designated by the county board, by the corporation counsel, in any matter arising under s. 48.13.

(6) By any appropriate person designated by the county board in any matter arising under s. 48.14.

History: 1977 c. 354.

48.10 Power of the judge to act as intake worker. The duties of the intake worker may be carried out from time to time by the judge at his or her discretion, but if a recommendation to file a petition is made, a citation is issued or an informal disposition is entered into, the judge shall be disqualified from participating further in the proceedings.

History: 1977 c. 354; 1979 c. 331, 359.

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 court to open court records or to disclose their contents.

History: 1977 c. 449.

SUBCHAPTER III

JURISDICTION

48.12 Jurisdiction over children alleged to be delinquent. (1) The court has exclusive jurisdiction, except as provided in ss. 48.17 and 48.18, over any child 12 years of age or older who is alleged to be delinquent as defined in s. 48.02 (3m).

(2) If a court proceeding has been commenced under this section before a child is 18 years of age, but the child becomes 18 years of age before admitting the facts of the petition at the plea hearing or if the child denies the facts, before an adjudication, the court retains jurisdiction over the case to dismiss the action with prejudice, to waive its jurisdiction under s. 48.18, or to enter into a consent decree. If the

court finds that the child has failed to fulfill the express terms and conditions of the consent decree or the child objects to the continuation of the consent decree, the court may waive its jurisdiction.

History: 1971 c. 125; 1973 c. 90; 1977 c. 29, 354; 1979 c. 135, 300.

State may not delay charging child in order to avoid juvenile court jurisdiction. *State v. Becker*, 74 W (2d) 675, 247 NW (2d) 495.

Notwithstanding 48.13 (12), court had jurisdiction under 48.12 (1) over child who committed delinquent act before 12th birthday but was charged after 12th birthday. In *Matter of D. V.* 100 W (2d) 363, 302 NW (2d) 64 (Ct. App. 1981).

Under facts of case, court retained jurisdiction to determine waiver although juvenile turned 18 after proceedings were commenced. In *Interest of TDP*, 109 W (2d) 495, 326 NW (2d) 741 (1982).

Contempt of court allegation did not support determination of delinquency. In *Interest of V. G.* 111 W (2d) 647, 331 NW (2d) 632 (Ct. App. 1983).

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), 1973 stats., [66.054 (22)] and 176.31, 1973 stats., which impose criminal penalties on a person under 18 years of age. 63 *Atty. Gen.* 95.

Wisconsin courts have jurisdiction over resident juveniles alleged to be delinquent because they violated another state's criminal laws. 70 *Atty. Gen.* 143.

48.125 Jurisdiction over children alleged to have violated civil laws or ordinances. The court has exclusive jurisdiction over any child alleged to have violated a law punishable by forfeiture or a county, town or other municipal ordinance, except as provided under s. 48.17.

History: 1977 c. 354.

48.13 Jurisdiction over children alleged to be in need of protection or services. The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(1) Who is without a parent or guardian;
 (2) Who has been abandoned;
 (3) Who has been the victim of sexual or physical abuse including injury which is self-inflicted or inflicted by another by other than accidental means;

(4) Whose parent or guardian signs the petition requesting jurisdiction and states that he or she is unable to care for, control or provide necessary special care or special treatment for the child;

(5) Who has been placed for care or adoption in violation of law;

(6) Who is habitually truant from school, after evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed;

(7) Who is habitually truant from home and either the child or a parent, guardian or a relative in whose home the child resides signs the petition requesting jurisdiction and attests

in court that reconciliation efforts have been attempted and have failed;

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction and attests in court that he or she is in need of special care and treatment which the parent, guardian or legal custodian is unwilling to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(11) Who is suffering emotional damage for which the parent or guardian is unwilling to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal or outward aggressive behavior; or

(12) Who, being under 12 years of age, has committed a delinquent act as defined in s. 48.12.

(13) Who has not been immunized as required by s. 140.05 (16) and not exempted under s. 140.05 (16) (c).

History: 1977 c. 29, 354; 1979 c. 298, 300, 334.

48.135 Referral of children to proceedings under chapter 51 or 55. (1) If a child alleged to be delinquent or in need of protection or services is before the court and it appears that the child is developmentally disabled, mentally ill, alcoholic or drug dependent, the court as defined in ch. 51 may proceed under ch. 51 or 55.

(2) Admissions, placements or commitments of any child made in or to an inpatient facility as defined in s. 51.01 (10) shall be governed by ch. 51 or 55.

History: 1977 c. 354; 1977 c. 418 s. 928 (55) (c); 1977 c. 428 s. 6; 1979 c. 300.

48.14 Jurisdiction over other matters relating to children. The court has exclusive jurisdiction over:

(1) The termination of parental rights to a minor in accordance with subch. VIII.

(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 subch. VIII; or

(b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.43 and 48.839 (4) (a) and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

(3) The adoption of children.

(4) Proceedings under the interstate compact on juveniles under s. 48.991.

(5) Proceedings under chs. 51 and 55 which apply to minors.

(6) Consent to marry under s. 765.02.

(7) Appeals under s. 115.81.

(8) Runaway children, but only as provided under s. 48.227 for the limited purpose described in that section.

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33.

48.15 Jurisdiction of other courts to determine legal custody. Nothing contained in ss. 48.12, 48.13 and 48.14 deprives other courts of the right to determine the legal custody of children by habeas corpus or to determine the legal custody or guardianship of children if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under this chapter is paramount in all cases involving children alleged to come within the provisions of ss. 48.12, 48.13 and 48.14.

History: 1977 c. 449; 1981 c. 289

Judicial Council Note, 1981: Reference to "writs" of habeas corpus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto [Bill 613-A]

48.17 Jurisdiction over traffic and boating, civil law and ordinance violations. (1) TRAFFIC VIOLATIONS. Except for ss. 342.06 (2) and 344.48 (1), and s. 346.67 when death or injury occurs, courts of criminal and civil jurisdiction shall have exclusive jurisdiction in proceedings against children 16 or older for violations of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations as defined in s. 345.20 and nonmoving traffic violations as defined in s. 345.28 (1). A child convicted of a traffic or boating offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except that the court may disregard any minimum period of incarceration specified for the offense.

(2) CIVIL LAW AND ORDINANCE VIOLATIONS.

(a) Except as provided in sub. (1), municipal courts have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter in proceedings against children aged 14 or older for violations of county, town or other municipal ordinances. When a child is alleged to have violated a municipal ordinance, the child may be:

1. Issued a citation directing the child to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance;

2. Issued a citation directing the child to appear in the court assigned to exercise jurisdic-

tion under this chapter or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 48.237; or

3. Referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter pursuant to s. 48.125.

(b) When a child 14 years of age or older is alleged to have violated a civil law punishable by a forfeiture or where a child is alleged to have violated a municipal ordinance but there is no municipal court in the municipality, the child may be:

1. Issued a citation directing the child to appear in the court assigned to exercise jurisdiction under this chapter or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 48.237; or

2. Referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter pursuant to s. 48.125.

(c) The citation procedures described in ch. 800 shall govern proceedings involving children in municipal court, except that this chapter shall govern the taking and holding of a child in custody. When a child is before the court assigned to exercise jurisdiction under this chapter upon a citation alleging the child to have violated a civil law or municipal ordinance, the procedures specified in s. 48.237 shall apply. If a citation is issued to a child, the issuing agency shall, within 7 days, notify the child's parent or guardian. The agency issuing a citation to a child who is 14 or 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.08 (3) (b) or 125.09 (2) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 48.24 for informational purposes only.

(d) If a municipal court finds that the child violated a municipal ordinance other than an ordinance which conforms to s. 125.07 (4) (a) or (b), 125.08 (3) (b) or 125.09 (2), it shall enter any of the dispositional orders permitted under s. 48.343 (1), (2), (5), (6), (7) or (8). If a child fails to pay the forfeiture imposed by the municipal court, the court shall not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 nor more than 90 days, or suspend the child's operating privilege, as defined in s. 340.01 (40), for not less than 30 nor more than 90 days. If a court suspends a license under this section, it shall immediately take possession of the suspended license and forward it to the department which issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the first 30 days after the

license is suspended, the suspension shall be reduced to the minimum period of 30 days. If it is paid thereafter, the court shall immediately notify the department, which shall thereupon return the license to the person. If it is paid after the end of the 30 days, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the child.

(e) If a municipal court finds that a child violated a municipal ordinance which conforms to s. 125.07 (4) (a) or (b), 125.08 (3) (b) or 125.09 (2), it shall enter a dispositional order under s. 48.344.

History: 1971 c. 40, 278; 1975 c. 39; 1977 c. 354, 449; 1979 c. 300, 331; 1979 c. 333 s. 5; 1979 c. 359; 1981 c. 79 s. 18; 1981 c. 165; 1983 a. 74 s. 32.

Section 48.17, 1975 stats., does not offend equal protection guarantees of U.S. or Wisconsin constitutions. *State v. Hart*, 89 W (2d) 58, 277 NW (2d) 843 (1979)

48.18 Jurisdiction for criminal proceedings for children 16 or older; waiver hearing. (1)

If a child is alleged to have violated a state criminal law on or after his or her 16th birthday, the child or district attorney may apply to the court to waive its jurisdiction under this chapter. The judge may initiate a petition for waiver if the judge disqualifies himself or herself from any future proceedings on the case.

(2) The waiver hearing shall be brought on by filing a petition alleging delinquency drafted under s. 48.255 and a petition for waiver of jurisdiction which shall contain a brief statement of the facts supporting the request for waiver. The petition for waiver of jurisdiction shall be filed prior to the plea hearing.

(3) (a) The child shall be represented by counsel at the waiver hearing. Written notice of the time, place and purpose of the hearing shall be given to the child, any parent, guardian or legal custodian, and counsel at least 3 days prior to the hearing. The notice shall contain a statement of the requirements of s. 48.29 (2) with regard to substitution of the judge. Where parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the child shall have access to the social records and other reports consistent with s. 48.293.

(b) The child has the right to present testimony on his or her own behalf including expert testimony and has the right to cross-examine witnesses at the hearing.

(c) The child does not have the right to a jury at a hearing under this section.

(4) The judge shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive its jurisdiction.

(5) If prosecutive merit is found, the judge, after taking relevant testimony which the district attorney shall present and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled, whether the child has been previously found delinquent, whether such delinquency involved the infliction of serious bodily injury, the child's motives and attitudes, the child's physical and mental maturity, the child's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or wilful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system, and, where applicable, the mental health system.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in circuit court.

(6) After considering the criteria under sub. (5), the judge shall state his or her finding with respect to the criteria on the record, and, if the judge determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the child or of the public to hear the case, the judge shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate criminal proceedings in the circuit court, and the circuit court thereafter has exclusive jurisdiction.

(8) When waiver is granted, the child, if held in secure custody, shall be transferred to an appropriate officer or adult facility and shall be eligible for bail in accordance with chs. 968 and 969.

History: 1977 c. 354, 449; 1979 c. 300.

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.

State may not delay charging child in order to avoid juvenile court jurisdiction. *State v. Becker*, 74 W (2d) 675, 247 NW (2d) 495.

Order waiving jurisdiction over juvenile is appealable under 808.03 (2). *State ex rel. A. E. v. Green Lake County Cir. Ct.* 94 W (2d) 98, 288 NW (2d) 125 (1980).

Motion to suppress evidence on ground of inadmissibility at trial is premature when brought at waiver hearing. In interest of D.E.D. 101 W (2d) 193, 304 NW (2d) 133 (Ct. App 1981)

Even though juvenile does not contest waiver, (5) requires district attorney to present testimony on issue of waiver. Determination of prosecutive merit under (4) discussed. In Interest of T. R. B. 109 W (2d) 179, 325 NW (2d) 329 (1982).

Department has exclusive authority to detain and release child who has violated conditions of probation imposed by court of criminal jurisdiction. Child can be held in adult section of county jail. 72 Atty. Gen. 104.

Person who commits crime while under 18, but is charged after attaining age of 18, is not constitutionally entitled to juvenile jurisdiction where delay in filing charges was not result of deliberate effort to avoid juvenile jurisdiction or of prosecutorial negligence. *Bendler v Percy*, 481 F Supp 813 (1979).

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

Wisconsin's new juvenile waiver statute: when should we wave goodbye to juvenile court protections? 1979 WLR 190.

48.185 Venue. (1) Venue for any proceeding under ss. 48.12, 48.125, 48.13, 48.135, 48.14 and 48.18 may be in any of the following: the county where the child resides, the county where the child 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. Venue for proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child's parent pursuant to a dispositional order, in which case venue is as provided in sub. (2).

(2) Venue for any proceeding under s. 48.363 or 48.365, or under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child or parent.

History: 1977 c. 354; 1979 c. 330

SUBCHAPTER IV

HOLDING A CHILD IN CUSTODY

48.19 Taking a child into custody. (1) A child may be taken into custody under:

- (a) A warrant;
- (b) A capias issued by a judge of the court assigned to exercise jurisdiction under this chapter in accordance with s. 48.28;
- (c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody. The order shall specify that the child be held in custody under s. 48.207; or
- (d) Circumstances in which a law enforcement officer believes on reasonable grounds that:

1. A capias or a warrant for the child's apprehension has been issued in this state, or that the child is a fugitive from justice;

2. A capias or a warrant for the child's apprehension has been issued in another state;

3. The child is committing or has committed an act which is a violation of a state or federal criminal law;

4. The child has run away from his or her parents, guardian or legal or physical custodian;

5. The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary;

6. The child has violated the terms of court-ordered supervision or aftercare supervision administered by the department;

7. The child has violated the conditions of an order under s. 48.21 (4) or the conditions of an order for temporary physical custody by an intake worker; or

8. The child has violated a civil law or a local ordinance punishable by a forfeiture, provided that in any such case the child shall be released as soon as reasonably possible under s. 48.20 (2).

(2) When a child is taken into physical custody as provided in this section, the person taking the child into custody shall immediately attempt to notify the parent, guardian and legal custodian of the child by the most practical means. The person taking the child into custody shall continue such attempt until the parent, guardian and legal custodian of the child are notified, or the child is delivered to an intake worker under s. 48.20 (3), whichever occurs first. If the child is delivered to the intake worker before the parent, guardian and legal custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian and legal custodian of the child are notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1977 c. 354, 449; 1979 c. 300

48.20 Release or delivery from custody. (1) Children taken into custody shall be released from custody as soon as is reasonably possible.

(2) A person taking a child into custody shall make every effort to immediately release the child to:

- (a) The child's parent, guardian or legal custodian or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, may release

48.20 CHILDREN'S CODE

the child to a responsible adult, and verbally counsel or warn as may be appropriate, or, in the case of a child 15 years of age or older, may release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or

(b) In the case of a runaway child, may release the child to a home authorized under s. 48.227.

(3) If the child is released under sub. (2), the person who took the child into custody shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released. If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give any child 12 years of age or older a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

(4) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child into physical custody, the intake worker or other appropriate person shall deliver the child to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(5) If the child is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical harm to the child or to others, or a very substantial probability of physical impairment or injury to the child exists due to the impaired judgment of the child, and the standards of s. 51.15 are met, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(6) If the child is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(7) (a) When a child is interviewed by an intake worker, the intake worker shall inform any child possibly involved in a delinquent act of his or her right to counsel and the right against self-incrimination. If the child is alleged to be in need of protection or services and is 12

years of age or older, the intake worker shall inform the child of his or her right to counsel.

(b) The intake worker shall review the need to hold the child in custody and shall make every effort to release the child from custody under s. 48.205 and criteria promulgated under s. 48.06 (1) or (2).

(c) The intake worker may release the child:

1. To a parent, guardian or legal custodian, or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, release the child to a responsible adult, counseling or warning the child as may be appropriate, or, if a child is 15 years of age or older, release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or

2. In the case of a runaway child, to a home authorized under s. 48.227.

(d) If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

(8) The intake worker shall base his or her decision to hold a child in custody on the criteria specified in s. 48.205 and criteria promulgated under s. 48.06 (1) or (2). If a child is held in custody, the intake worker shall notify the child's parent, guardian and legal custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian and legal custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, the right to counsel under s. 48.23 regardless of ability to pay, and the right to present and cross-examine witnesses at the hearing. If the parent, guardian or legal custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. Where the child is possibly involved in a delinquent act, and where the child is alleged to be in need of protection or services and is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian or legal custodian. The intake worker shall notify both the child and the child's parent, guardian or legal custodian.

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5)

48.205 Criteria for holding a child in physical custody. (1) A child may be held under s. 48.207, 48.208 or 48.209 if the intake worker determines that there is probable cause to be-

lieve the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will commit injury to the person or property of others or cause injury to himself or herself or be subject to injury by others;

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is unavailable, unwilling or unable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate; or

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers or proceedings of the department for revocation of aftercare supervision.

(2) The criteria for holding a child in custody specified in this section shall govern the decision of all persons responsible for determining whether the action is appropriate.

History: 1977 c. 354; 1979 c. 300; 1983 a. 399.

48.207 Places where a child may be held in nonsecure custody. (1) A child held in physical custody under s. 48.205 may be held in any of the following places:

(a) The home of a parent or guardian.

(b) The home of a relative.

(c) A licensed foster home provided the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court and if the person has not had a foster home license refused, revoked or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the child is held under s. 48.20 (4).

(h) A place listed in s. 51.15 (3) if the child is held under s. 48.20 (5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20 (6).

(k) A facility under s. 48.58.

(2) If a facility listed in sub. (1) (b) to (k) is used to hold children in custody, or if supervisory services of a home detention program are provided to children held under sub. (1) (a), its

authorized rate shall be paid by the county for the care of the child. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county for the supervision or care of the child.

(3) A child taken into custody under s. 48.981 may be held in a hospital, foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

History: 1977 c. 354, 355, 447; 1979 c. 300; 1983 a. 172; 1983 a. 189 s. 329 (5).

48.208 Criteria for holding a child in a secure detention facility. A child may be held in a secure detention facility if the intake worker determines that one of the following conditions applies:

(1) Probable cause exists to believe that the child has committed a delinquent act and either presents a substantial risk of physical harm to another person or a substantial risk of running away as evidenced by a previous act or attempt so as to be unavailable for a court or revocation hearing for children on departmental aftercare. For children on departmental aftercare, the delinquent act referred to in this section may be the act for which the child was committed to a secured correctional facility.

(2) Probable cause exists to believe that the child is a fugitive from another state or has run away from a secured correctional facility and there has been no reasonable opportunity to return the child.

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the judge in a protective order.

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 or by the judge or juvenile court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

(5) Probable cause exists to believe that the child has been adjudged or alleged to be delinquent and has run away from another county and would run away from nonsecure custody pending his or her return. A child may be held in secure custody under this subsection for no more than 24 hours unless an extension of 24 hours is ordered by the judge for good cause shown. Only one extension may be ordered by the judge.

History: 1977 c. 354; 1979 c. 300.
See note to 785.02, citing In Interest of D. L. D. 110 W (2d) 168, 327 NW (2d) 682 (1983)

See note to 785.02, citing 70 Atty. Gen. 98

48.209 Criteria for holding a child in a county jail. Subject to the provisions of s. 48.208, a county jail may be used as a secure detention facility if the criteria under either sub. (1) or (2) are met:

(1) There is no other secure detention facility approved by the department or a county which is available and:

(a) The jail meets the standards for secure detention facilities established by the department;

(b) The child is held in a room separated and removed from incarcerated adults;

(c) The child is not held in a cell designed for the administrative or disciplinary segregation of adults;

(d) Adequate supervision is provided; and

(e) The judge reviews the status of the child every 3 days.

(2) The child presents a substantial risk of physical harm to other persons in the secure detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The provisions of sub. (1) (a) to (e) shall be met. The child shall be given a hearing and transferred only upon order of the judge.

(3) The restrictions of this section do not apply to the use of jail for a child waived to adult court.

History: 1977 c. 354

48.21 Hearing for child in custody. (1) HEARING; WHEN HELD. (a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or juvenile court commissioner within 24 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays and legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed where a child is taken into custody under s. 48.19 (1) (b) or (d) 2, 6 or 7 or where the child is a runaway from another state, in which case a written statement of the reasons for holding a child in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or juvenile court commissioner for an additional 48 hours from the time of the hearing only if, as a result of the facts

brought forth at the hearing, the judge or juvenile court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is unwilling or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. In the event of failure to file a petition within the 48-hour extension period provided for in this paragraph, the judge or juvenile court commissioner shall order the child's immediate release from custody.

(2) **PROCEEDINGS CONCERNING RUNAWAY OR DELINQUENT CHILDREN.** Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.12 or 48.13 (7) or (12) shall be conducted according to this subsection.

(a) A child held in a nonsecure place of custody may waive in writing the hearing under this section. After any waiver, a hearing shall be granted upon the request of the child or any other interested party. Any child transferred to a secure detention facility shall thereafter have a hearing under this section.

(b) A copy of the petition shall be given to the child at or prior to the time of the hearing. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian and to the child in accordance with s. 48.20 (8).

(c) Prior to the commencement of the hearing, the child shall be informed by the judge or juvenile court commissioner of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 48.18 if applicable, the right to counsel under s. 48.23 regardless of ability to pay if the child is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the judge or juvenile court commissioner, the right to confront and cross-examine witnesses and the right to present witnesses.

(d) If the child is not represented by counsel at the hearing and the child is continued in custody as a result of the hearing, the child may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold in custody be reheard. If the request is made, a rehearing shall take place as soon as may be possible. Whether or not counsel was present, any order to hold the child in custody shall be subject to rehearing for good cause.

(3) **PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES.** Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.13 (1) to (5) or

(8) to (11) shall be conducted according to this subsection.

(a) The parent, guardian or legal custodian may waive the hearing under this section. Agreement in writing of the child is required if he or she is over 12. After any waiver, a hearing shall be granted at the request of any interested party.

(b) If present at the hearing, a copy of the petition shall be given to the parent, guardian or legal custodian, and to the child if he or she is 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian and to the child if he or she is 12 years of age or older in accordance with s. 48.20 (8).

(d) Prior to the commencement of the hearing, the parent, guardian or legal custodian shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to counsel under s. 48.23 regardless of ability to pay, the right to confront and cross-examine witnesses and the right to present witnesses.

(e) If the parent, guardian or legal custodian or the child is not represented by counsel at the hearing and the child is continued in custody as a result of the hearing, the parent, guardian, legal custodian or child may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the child in custody be reheard. If the request is made, a rehearing shall take place as soon as may be possible. Any order to hold the child in custody shall be subject to rehearing for good cause, whether or not counsel was present.

(4) CONTINUATION OF CUSTODY. If the judge or juvenile court commissioner finds that the child should be continued in custody under the criteria of s. 48.205, he or she shall enter one of the following orders:

(a) Place the child with a parent, guardian, legal custodian or other responsible person and may impose reasonable restrictions on the child's travel, association with other persons or places of abode during the period of placement, including a condition requiring the child to return to other custody as requested; or subject the child to the supervision of an agency agreeing to supervise the child. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian or other responsible person which may be necessary to ensure the safety of the child.

(b) Order the child held in an appropriate manner under s. 48.207, 48.208 or 48.209.

(5) ORDERS IN WRITING. (a) All orders to hold in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(b) An order relating to a child held in custody outside of his or her home shall also describe any efforts that were made to permit the child to remain at home and the services that are needed to ensure the child's well-being, to enable the child to return to his or her home and to involve the parents in planning for the child.

(6) AMENDMENT OF ORDER. An order placing a child under sub. (4) (a) on conditions specified in this section may at any time be amended, with notice, so as to return the child to another form of custody for failure to conform to the conditions originally imposed. A child may be transferred to secure custody if he or she meets the criteria of s. 48.208.

(7) INFORMAL DISPOSITION. If the judge or juvenile court commissioner determines that the best interests of the child and the public are served, he or she may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399.

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

48.22 Establishment of secure detention facilities and shelter care facilities. (1) (a) The county board of one county may establish a secure detention facility or a shelter care facility or both or 2 or more counties may join together and establish a secure detention facility or a shelter care facility or both in accordance with ss. 46.16 and 46.20.

(b) In counties having a population of less than 500,000, the policies of the secure detention facility or shelter care facility shall be determined by the judge of the court assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district or, in the case of a secure detention facility or shelter care facility established by 2 or more counties, by a committee of the judges of the courts in the participating counties assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district.

(c) In counties having a population of 500,000 or more, the nonjudicial operational policies of the secure detention facility and the detention section of the children's court center shall be established by the county board of supervisors, and the execution thereof shall be the responsibility of the director of the children's court center.

(2) (a) Plans for the secure detention facility, juvenile portion of the county jail or shelter care facility shall be approved by the department. The department shall adopt rules establishing minimum requirements for the approval of the operation of secure detention facilities and the juvenile portion of county jails. The plans and rules shall be designed to protect the health, safety and welfare of the children in these facilities.

(b) If the department approves, the secure detention facility 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 the jail or other facility that it may be entered without passing through areas where adults are confined and that children detained in the facility cannot communicate with or view adults confined therein.

(c) A shelter facility shall not be in the same building as a facility for the detention of adults and shall be used for the temporary care of children.

(3) (a) In counties having a population of less than 500,000, public secure detention facilities and public shelter care facilities shall be in the charge of a superintendent. The judge of the court assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district or, where 2 or more counties operate joint public secure detention facilities or public shelter care facilities, the committee of judges of the courts assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district shall appoint the superintendent and other necessary personnel for the care and education of the children in secure detention or shelter care facilities, subject to civil service regulations in counties having civil service.

(b) In counties having a population of 500,000 or more, the director of the children's court center shall be in charge of and responsible for public secure detention facilities, the secure detention section of the 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.

(5) A county board, or 2 or more county boards jointly, may contract with privately operated shelter care facilities or home detention programs for purchase of services. The county board may delegate this authority to county social services departments.

(7) No person may establish a shelter care facility without first obtaining a license under s. 48.66.

History: 1977 c. 29, 194; 1977 c. 354 ss. 39, 52; 1977 c. 418 ss. 305, 305m, 928 (55) (c); 1977 c. 447, 449; 1979 c. 34 s. 2102 (20) (a); 1979 c. 300; 1981 c. 20, 329.

48.225 State-wide plan for detention homes.

The department shall assist counties in establishing detention homes under s. 48.22 by developing and promulgating a state-wide plan for the establishment and maintenance of suitable detention facilities reasonably accessible to each court.

History: 1977 c. 354 s. 54; 1977 c. 447 s. 210.

48.227 Runaway homes. (1) Nothing contained in this section prohibits a home licensed under s. 48.48 or 48.75 from providing housing and services to a runaway child with the consent of the child and the consent of the child's parent, guardian or legal custodian, under the supervision of a county social services agency, a child welfare agency or the department. When the parent, guardian or legal custodian and the child both consent to the provision of these services and the child has not been taken into custody, no hearing as described in this section is required.

(2) Any person who operates a home under sub. (1) and licensed under s. 48.48 or 48.75, when engaged in sheltering a runaway child without the consent of the child's parent, guardian or legal custodian, shall notify the intake worker of the presence of the child in the home within 12 hours. The intake worker shall notify the parent, guardian and legal custodian as soon as possible of the child's presence in that home. A hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) For runaway children who have been taken into custody and then released, the judge may, with the agreement of the persons operating the homes, designate homes licensed under ss. 48.48 and 48.75 as places for the temporary care and housing of such children. If the parent, guardian or legal custodian refuses to consent, the person taking the child into custody or the intake worker may release the child to one of the homes designated under this section; however, a hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian, or legal custodian from con-

ferring with the child or the person operating the home.

(4) (a) If the child's parent, guardian or legal custodian does not consent to the temporary care and housing of the child at the runaway home as provided under sub. (2) or (3), a hearing shall be held on the issue by the judge or juvenile court commissioner within 24 hours of the time that the child entered the runaway home, excluding Saturdays, Sundays and legal holidays. The intake worker shall notify the child and the child's parent, guardian or legal custodian of the time, place and purpose of the hearing.

(b) If, in addition to jurisdiction under par. (c), the court has jurisdiction over the child under ss. 48.12 to 48.14, excluding s. 48.14 (8), a hearing may be held under s. 48.21.

(c) For the purposes of this section, the court has jurisdiction over a runaway child only to the extent that it may hold the hearings and make the orders provided in this section.

(d) At the hearing, the child, the child's parent, guardian or legal custodian and a representative of the runaway home may present evidence, cross-examine and confront witnesses and be represented by counsel or guardian ad litem.

(e) At the conclusion of the hearing, the court may order:

1. That the child be released to his or her parent, guardian or legal custodian; or

2. That, with the consent of the child and the runaway home, the child remain in the care of the runaway home for a period of not more than 20 days. Without further proceedings, the child shall be released whenever the child indicates, either by statement or conduct, that he or she wishes to leave the home or whenever the runaway home withdraws its consent. During this time period not to exceed 20 days ordered by the court, the child's parent, guardian or legal custodian may not remove the child from the home but may confer with the child or with the person operating the home. If, at the conclusion of the time period ordered by the court the child has not left the home, and no petition concerning the child has been filed under s. 48.12 or 48.13, the child shall be released from the home. If a petition concerning the child has been filed under s. 48.12 or 48.13, the child may be held in temporary physical custody under ss. 48.20 to 48.21.

(5) No person operating an approved or licensed home in compliance with this section is subject to civil or criminal liability by virtue of false imprisonment.

History: 1977 c. 354; 1979 c. 300.

48.23 Right to counsel. (1) RIGHT OF CHILDREN TO LEGAL REPRESENTATION. Children subject to proceedings under this chapter shall be afforded legal representation as follows:

(a) Any child alleged to be delinquent under s. 48.12 or held in a secure detention facility shall be represented by counsel at all stages of the proceedings, but a child 15 years of age or older may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not transfer legal custody of the child to the subunit of the department administering corrections for placement in a secured correctional facility or transfer jurisdiction over the child to adult court.

(b) 1. If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court. Except as provided in subd. 2, a child 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.

2. If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(c) Any child subject to the jurisdiction of the court assigned to exercise jurisdiction under this chapter under s. 48.14 (5) shall be represented by counsel. No waiver of counsel may be accepted by the court.

(d) If a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, the court shall appoint legal counsel or a guardian ad litem for the child.

(2) RIGHT OF PARENTS TO COUNSEL. (a) Whenever a child is alleged to be in need of protection or services under s. 48.13, or is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel; but no such parent may waive counsel. A minor parent petitioning for the voluntary termination of parental rights shall be represented by a guardian ad litem. If a proceeding involves a contested adoption or the involuntary termination of parental rights, any parent 18 years old or older who appears before the court shall be represented by counsel; but the parent may

waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(b) If a petition under s. 48.13 is contested, no child may be placed outside his or her home unless the nonpetitioning parent is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the child may not be placed outside his or her home unless the nonpetitioning parent is represented by counsel at the hearing at which the placement is made. However, the parent may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court may place the child outside the home even though the parent was not represented by counsel.

(3) **POWER OF THE COURT TO REQUIRE REPRESENTATION AND APPOINT GUARDIANS AD LITEM.** At any time, upon request or on its own motion, the court may appoint a guardian ad litem for the child or any party and may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing.

(3m) **GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN.** The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (10) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child shall not be the same as counsel for any party or any governmental or social agency involved.

(4) **PROVIDING COUNSEL.** In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court, except for situations arising under sub. (2) where the child entitled to representation is a parent; and counsel is not knowingly and voluntarily waived; and it appears that the child is unable to afford counsel in full, or the child so indicates; the court shall refer the child to the authority for indigency determinations specified under s. 977.07 (1). In any situation under sub. (2) in which a parent is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). The court may appoint a guardian ad litem in any appropriate matter. In any other situation under this section in which a person has a right to be represented by counsel or guardian ad litem or is provided counsel or guardian ad litem at the discretion of the court, competent and independent counsel

or guardian ad litem shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay.

(5) **COUNSEL OF OWN CHOOSING.** Regardless of any provision of this section, any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

(6) **DEFINITION.** For the purposes of this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem for any party in the same proceeding.

History: 1977 c. 354, 355, 447, 449; 1979 c. 300, 356.

Cross Reference: See 48.275 (2), concerning contribution toward legal expenses by parent or guardian.

See note to 48.422, citing *In re Termination of Parental Rights to M. A. M.* 116 W (2d) 432, 342 NW (2d) 410 (1984).

Neither temporary custody order nor custodial interrogation were proceedings under (1) (a). *State v. Woods*, 117 W (2d) 701, 345 NW (2d) 457 (1984).

48.235 Guardian ad litem. A guardian ad litem appointed under this chapter shall be appointed under s. 879.23. On order of the court, the guardian ad litem shall be allowed reasonable compensation to be paid by the county in which the proceeding is held. The guardian ad litem has none of the rights of a general guardian. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party, may be appointed guardian ad litem in that proceeding.

History: 1977 c. 354.

48.237 Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter. (1)

The citation forms under s. 23.54, 66.119, 778.25, 778.26 or 800.02 may be used to commence an action for a violation of civil laws and ordinances in the court assigned to exercise jurisdiction under this chapter.

(2) The procedures for issuance and filing of a citation, and for forfeitures, stipulations and deposits set forth in ss. 23.50 to 23.67, 23.75 (3) and (4), 66.119, 778.25, 778.26 and 800.01 to 800.04 except s. 800.04 (2) (b), when the citation is issued by a law enforcement officer, shall be used as appropriate, except that this chapter shall govern taking and holding a child in custody, s. 48.37 shall govern costs and penalty assessments, and a capias shall be substituted for an arrest warrant. Sections 66.119 (3) (c), 66.12 (1) and 778.10 as they relate to collection of forfeitures do not apply.

(3) If a child to whom a citation has been issued does not submit a deposit or a stipulation and deposit, the child shall appear in the court

assigned to exercise jurisdiction under this chapter for a plea hearing under s. 48.30 at the date, time and place for the court appearance specified on the citation. If the child does not submit a stipulation and deposit or if the court refuses to accept a deposit unaccompanied by a stipulation, the child may be summoned to appear and the procedures which govern petitions for civil law or ordinance violations under s. 48.125 shall govern all proceedings initiated by a citation, except that the citation shall not be referred to the court intake worker for an intake inquiry and if the citation issued is a uniform municipal citation issued under ch. 800, the child may request a jury trial at any time prior to the fact-finding hearing and within 20 days after the plea hearing. If the court finds that a child violated a municipal ordinance or a civil law punishable by a forfeiture under this section, the court shall enter a dispositional order under s. 48.344, if applicable, or if s. 48.344 does not apply, the court may enter any of the dispositional orders under s. 48.343.

History: 1979 c. 300, 359; 1983 a. 418 s. 8.
Citation and forfeiture procedures for juveniles discussed 70 Atty. Gen. 67

SUBCHAPTER V

PROCEDURE

48.24 Receipt of jurisdictional information; intake inquiry. (1) Except where a citation has been issued under s. 48.17 (2), information indicating that a child should be referred to the court as delinquent, in need of protection or services or in violation of a civil law or a county, town or municipal ordinance shall be referred to the intake worker, who shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the child and of the public with regard to any action to be taken.

(2) As part of the intake inquiry, intake conferences may be conducted with notice to the child, parent, guardian and legal custodian. No child or other person may be compelled to appear at any conference, produce any papers or visit any place by an intake worker.

(3) If the intake worker determines as a result of the intake inquiry that the child should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 48.09 file a petition.

(4) If the intake worker determines as a result of the intake inquiry that the case should be subject to an informal disposition, or should be closed, the intake worker shall so proceed. If a

petition has been filed, informal disposition may not occur or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 48.09, or is dismissed by the judge.

(5) The intake worker shall recommend that a petition be filed, enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel or other official under s. 48.09 shall receive written notice of such action. A notice of informal disposition of an alleged delinquency case shall include a summary of facts surrounding the allegation and a list of prior intake referrals and dispositions. If a law enforcement officer has made a recommendation concerning the child, the intake worker shall forward this recommendation to the district attorney, corporation counsel or other official under s. 48.09. With respect to petitioning a child to be in need of protection or services, information received more than 40 days before filing the petition may be included to establish a condition or pattern which, together with information received within the 40-day period, provides a basis for conferring jurisdiction on the court. Notwithstanding the requirements of this section, the district attorney may initiate a delinquency petition under s. 48.25 within 20 days after notice that the case has been closed or that an informal disposition has been made. The judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection.

(6) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

(7) If a citation is issued to a child, the citation shall not be the subject of an intake inquiry or a review by an intake worker for the purpose of recommending informal disposition.

History: 1975 c. 430; 1977 c. 354; 1979 c. 300, 331, 355, 359.

48.243 Basic rights: duty of intake worker.

(1) Before conferring with the parent or child during the intake inquiry, the intake worker shall personally inform a child alleged to have committed a delinquent act, and parents and children 12 years of age or older who are the focus of an inquiry regarding the need for protection or services, that the referral may result in a petition to the court and:

- (a) What allegations could be in the petition;
- (b) The nature and possible consequences of the proceedings including the provisions of s. 48.17 or 48.18 if applicable;

(c) The right to remain silent and the fact that in a delinquency proceeding the silence of the child shall not be adversely considered by the court or jury, although silence of any party may be relevant in any nondelinquency proceeding;

(d) The right to confront and cross-examine those appearing against them;

(e) The right to counsel under s. 48.23;

(f) The right to present and subpoena witnesses;

(g) The right to a jury trial; and

(h) The right to have the allegations of the petition proved by clear and convincing evidence unless the child comes within the court's jurisdiction under s. 48.12 or 48.13 (12), in which case the standard of proof shall be beyond a reasonable doubt.

(2) This section does not apply if the child was present at a hearing under s. 48.21.

(3) If the child has not had a hearing under s. 48.21 and was not present at an intake conference under s. 48.24, the intake worker shall inform the child, parent, guardian and legal custodian as appropriate of basic rights under this section. This notice shall be given verbally, either in person or by telephone, and in writing. This notice shall be given so as to allow the child, parent, guardian or legal custodian sufficient time to prepare for the plea hearing. This subsection does not apply to cases of informal disposition under s. 48.245.

History: 1977 c. 354; 1979 c. 300.

48.245 Informal disposition. (1) The intake worker may enter into a written agreement with all parties which imposes informal disposition under this section if the intake worker has determined that neither the interests of the child nor of the public require filing of a petition for circumstances relating to ss. 48.12 to 48.14. Informal disposition shall be available only if the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist and upon consent of the child, parent, guardian and legal custodian.

(2) Informal disposition may provide that the child appear with a parent, guardian or legal custodian for counseling and advice, or that the child and a parent, guardian and legal custodian abide by such obligations as will tend to ensure the child's rehabilitation, protection or care. Informal disposition may not include any form of residential placement and may not exceed 6 months.

(3) The obligations imposed under an informal disposition and its effective date shall be set forth in writing. The child and a parent, guardian and legal custodian shall receive a copy, as shall any agency providing services under the agreement.

(4) The intake worker shall inform the child and the child's parent, guardian and legal custodian in writing of their right to object at any time to the fact or terms of the informal disposition, and if the objection arises the intake worker may alter the terms of the agreement or recommend to the district attorney or corporation counsel that a petition be filed.

(5) Informal disposition shall be terminated upon the request of the child, parent, guardian or legal custodian.

(6) An informal disposition arising out of an alleged delinquent act is terminated if the district attorney files a delinquency petition within 20 days after receipt of notice of the informal disposition under s. 48.24 (5). In such case statements made to the intake worker during the intake inquiry are inadmissible.

(7) If at any time during the period of informal disposition the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the informal disposition. Within 10 days after the cancellation of the informal disposition, the intake worker shall notify the district attorney, corporation counsel or other official under s. 48.09 of the cancellation and recommend whether or not a petition should be filed. In delinquency cases, the district attorney may initiate a petition within 20 days after the date of the notice regardless of whether the intake worker has recommended that a petition be filed. The judge shall dismiss with prejudice any petition which is not filed within the time limit specified in this subsection.

(8) If the obligations imposed under the informal disposition are met, the intake worker shall so inform the child and a parent, guardian and legal custodian in writing, and no petition may be filed or citation issued on the charges that brought about the informal disposition nor may the charges be the sole basis for a petition under ss. 48.13 to 48.14.

(9) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

History: 1977 c. 354; 1979 c. 300, 331, 359.

48.25 Petition: authorization to file. (1) A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. If a petition under s. 48.12 is to be filed, it shall be prepared, signed and filed by the district attorney. The district attorney, city attorney or corporation counsel or other appropriate official specified under s. 48.09 may file the petition if the proceeding is

under s. 48.125 or 48.13. The counsel or guardian ad litem for a parent, relative, guardian or child may file a petition under s. 48.13 or 48.14. The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 48.14 in a manner specified by the court.

(2) (a) If the proceeding is brought under s. 48.12, 48.125 or 48.13, the district attorney, corporation counsel or other appropriate official shall file the petition, close the case, or refer the case back to intake within 20 days after the date that the intake worker's recommendation was filed. A referral back to intake may be made only when the district attorney, corporation counsel or other appropriate official decides not to file a petition or determines that further investigation is necessary. If the case is referred back to intake upon a decision not to file a petition, the intake worker shall close the case or enter into an informal disposition within 20 days. If the case is referred back to intake for further investigation, the appropriate agency or person shall complete the investigation within 20 days. If another referral is made to the district attorney, corporation counsel or other appropriate official, it shall be considered a new referral to which the time limits of this subsection shall apply. The time limits in this subsection may only be extended by a judge upon a showing of good cause under s. 48.315. If a petition is not filed within the time limitations set forth in this subsection and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall dismiss with prejudice a petition which was not timely filed unless the court finds at the plea hearing that good cause has been shown for failure to meet the time limitations.

(b) In delinquency cases where there has been a case closure or informal disposition, the petition shall be filed within 20 days of receipt of the notice of closure or informal disposition. Failure to file within 20 days invalidates the petition and affirms the case closure or informal disposition. If a petition is filed within 20 days, the district attorney shall notify the parties to the agreement and the intake worker as soon as possible.

(3) If the district attorney, city attorney or corporation counsel or other appropriate official specified in s. 48.09 refuses to file a petition, any person may request the judge to order that the petition be filed and a hearing shall be held on the request. The judge may order the filing of the petition on his or her own motion. The matter may not be heard by the judge who orders the filing of a petition.

(4) Section 939.74 applies to delinquency petitions filed under this chapter.

(5) A citation issued under s. 48.17 (2) may serve as the initial pleading and is sufficient to confer the court with jurisdiction over the child when the citation is filed with the court.

History: 1977 c. 354; 447; 1979 c. 300, 331, 355, 359.

48.255 Petition; form and content. (1) A petition initiating proceedings under this chapter shall be entitled, "In the interest of (child's name), a person under the age of 18", and shall set forth with specificity:

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

(b) The names and addresses of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative.

(c) Whether the child is in custody, and, if so, the place where the child is being held and the time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or physical custodian.

(d) If violation of a criminal statute, an ordinance or another law is alleged, the citation to the appropriate law or ordinance as well as facts sufficient to establish probable cause that an offense has been committed and that the child named in the petition committed the offense.

(e) If the child is alleged to come within the provisions of s. 48.13 (1) to (11) or 48.14, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the child is in need of supervision, services, care or rehabilitation.

(2) If any of the facts in sub. (1) (a), (b) or (c) are not known or cannot be ascertained by the petitioner, the petition shall so state.

(3) If the information required under sub. (1) (d) or (e) is not stated the petition shall be dismissed or amended under s. 48.263 (2).

(4) A copy of the petition shall be given to the child if the child is 12 years of age or older or alleged to have committed a delinquent act and to the parents, guardian, legal custodian and physical custodian.

History: 1977 c. 354.

48.263 Amendment of petition. (1) Except as provided in s. 48.255 (3), no petition, process or other proceeding may be dismissed or reversed for any error or mistake if the case and the identity of the child named in the petition may be readily understood by the court; and the

court may order an amendment curing the defects.

(2) With reasonable notification to the interested parties and prior to the taking of a plea under s. 48.30, the petition may be amended at the discretion of the court or person who filed the petition. After the taking of a plea, if the child is alleged to be delinquent, the court may allow amendment of the petition to conform to the proof if the amendment is not prejudicial to the child. If the child is alleged to be in need of protection or services, the petition may be amended provided any objecting party is allowed a continuance for a reasonable time.

History: 1977 c. 354; 1979 c. 300.

48.27 Notice; summons. (1) After a citation is issued or a petition has been filed relating to facts concerning a situation specified under ss. 48.12, 48.125 and 48.13, unless the parties under sub. (3) voluntarily appear, the court may 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) Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

(3) The court shall also notify, under s. 48.273, the child and any parent, guardian and legal custodian of the child of all hearings involving the child except hearings on motions for which notice need only be provided to the child and his or her counsel. Where parents entitled to notice have the same place of residence, notice to one shall constitute notice to the other. The first such written notice to any interested party shall have a copy of the petition attached to it.

(4) The notice shall:

(a) Contain the name of the child, and the nature, location, date and time of the hearing.

(b) Advise the child and any other party, if applicable, of his or her right to legal counsel regardless of ability to pay.

(5) The court shall make every reasonable effort to identify and notify any person who has filed a declaration of interest under s. 48.025 and any person who has been adjudged to be the biological father of the child in a judicial proceeding unless the biological father's rights have been terminated.

(6) When a proceeding is initiated under s. 48.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court, consistent with applicable governing statutes.

(7) When a citation has been issued under s. 48.17 (2) and the child's parent or guardian has

been notified of the citation, subs. (3) and (4) do not apply.

(8) When a petition is filed under s. 48.12 or 48.13, the court shall notify, in writing, the child's parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the child, as provided under s. 48.275 (2).

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27.

48.273 Service of summons or notice; expense. (1)

Service of summons or notice required by s. 48.27 may be made by mailing a copy thereof to the persons summoned or notified. If the persons fail to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, except where the court determines otherwise because the child is in secure custody, and service shall be made personally by delivering to the persons a copy of the summons or notice; except that if the court is satisfied that it is impracticable to serve the summons or notice personally, it may make an order providing for the service of the summons or notice by certified mail addressed to the last-known addresses of the persons. The court may refuse to grant a continuance when the child is being held in secure custody, but in such a case the court shall order that service of notice of the next hearing be made personally or by certified mail to the last-known address of the person who failed to appear at the hearing. Personal service shall be made at least 72 hours before the time of the hearing. Mail shall be sent at least 7 days before the time of the hearing, except where the petition is filed under s. 48.13 and the person to be notified lives outside the state, in which case the mail shall be sent at least 14 days before the time of the hearing.

(2) Service of summons or notice required by this chapter 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 to 48.14, shall be a charge on the county when approved by the court.

History: 1977 c. 354; 1979 c. 300

48.275 Parents' contribution to cost of court and legal services. (1)

If the court finds a child to be delinquent under s. 48.12, in violation of a civil law or ordinance under s. 48.125 or in need of protection or services under s. 48.13, the court shall order the parents of the child to contribute toward the expense of post-adjudication services to the child the proportion

of the total amount which the court finds the parents are able to pay.

(2) (a) If this state or a county provides legal counsel to a child subject to s. 48.12 or 48.13, the court shall order the parents or guardian to provide a statement of income, assets and living expenses to the county department of social services or public welfare and shall order the parents or guardian of the child to reimburse the state or county if required under par. (b) or (c). The court may not order reimbursement if a parent or guardian is the complaining or petitioning party or if the court finds that the interests of the parent or guardian and the interests of the child in the proceedings are substantially and directly adverse and that reimbursement would be unfair to the parent or guardian. The court may not order reimbursement until after the child is found to be delinquent under s. 48.12 or in need of protection and services under s. 48.13; or until after the completion of all court proceedings under this chapter.

(b) If this state provides the child with legal counsel, the county department of social services or public welfare shall determine whether the parent or guardian is indigent as provided under s. 977.07 and shall determine the amount of reimbursement. If the parent or guardian is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent or guardian is found to be indigent in part, the amount of reimbursement shall be the amount of partial payment determined in accordance with the rules of the public defender board under s. 977.02 (3).

(c) If the county provides the child with legal counsel, the court shall either make a determination of indigency or shall appoint a county agency to make the determination. If the court or the agency finds that the parent or guardian is not indigent or is indigent in part, the court shall establish the amount of reimbursement and shall order the parent or guardian to pay it.

(cg) The court shall, upon motion by a parent or guardian, hold a hearing to review any of the following:

1. An indigency determination made under par. (b) or (c).

2. The amount of reimbursement ordered.

3. The court's finding, under par. (a), that the interests of the parent or guardian and the child are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent or guardian.

(cr) Following a hearing under par. (cg), the court may affirm, rescind or modify the reimbursement order.

(d) Reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the county treasurer, who shall deposit 50% of the amount paid for state-provided counsel in the county treasury and transmit the remainder to the state treasurer for deposit in the general fund. The county treasurer shall deposit 100% of the amount paid for county-provided counsel in the county treasury.

(e) A person who fails to comply with an order under par. (b) or (c) may be proceeded against for contempt of court under ch. 785.

History: 1977 c. 29, 354, 449; 1981 c. 20; 1983 a. 27.

48.28 Failure to obey summons; capias. If any person summoned fails without reasonable cause to appear, he or she 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. Subchapter IV governs the taking and holding of a child in custody.

History: 1977 c. 354 s. 41; 1979 c. 331, 359.

48.29 Substitution of judge. (1) The child, or the child's parent, guardian or legal custodian, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named therein. In a proceeding under s. 48.12 or 48.13 (12), only the child may request a substitution of the judge. Whenever any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. Except as provided in sub. (2), after a request has been filed, the judge shall be disqualified to act in relation to the matter and shall promptly request assignment of another judge under s. 751.03. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section shall not apply to proceedings under s. 48.21.

(2) If the request for substitution of a judge is made for the judge scheduled to conduct a waiver hearing under s. 48.18, the request shall be filed before the close of the working day preceding the day that the waiver hearing is scheduled. However, the judge may allow an authorized party to make a request for substitution on the day of the waiver hearing. If the request for substitution is made subsequent to

48.29 CHILDREN'S CODE

1144

the waiver hearing, the judge who conducted the waiver hearing may also conduct the plea hearing.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1979 c. 300

48.293 Discovery. (1) Copies of all peace officer reports, including but not limited to the officer's memorandum and witnesses' statements, shall be made available upon request to counsel or guardian ad litem prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 48.09. The child, through counsel or guardian ad litem, is the only party who shall have access to the reports in proceedings under ss. 48.12, 48.125 and 48.13 (12). The identity of a confidential informant may be withheld pursuant to s. 905.10.

(2) All records relating to a child which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party, upon demand and upon presentation of releases where necessary, at least 48 hours before the proceeding. Persons entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel not to disclose specified items in the materials to the child or the parent if the court reasonably believes that the disclosure would be harmful to the interests of the child. Sections 971.23 to 971.25 shall be applicable in all delinquency proceedings under this chapter except the court shall establish the timetable for s. 971.23 (3) and (8).

History: 1977 c. 354

Prior to waiver hearing, juvenile does not have broad discovery rights under this section. In Interest of T. M. J. 110 W (2d) 7, 327 NW (2d) 198 (Ct. App. 1982).

48.295 Physical, psychological, mental or developmental examination. (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination, the court may order any child coming within its jurisdiction to be examined as an outpatient by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a masters degree in social work or another related field of child development, in order that the child's physical, psychological, mental or developmental condition may be considered. The court may also order an examination of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court. The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the request for such an examination before ordering the examination. The expenses of an

examination, if approved by the court, shall be paid by the county of the court ordering the examination.

(2) If there is probable cause to believe that the child has committed the alleged offense and is not competent to proceed, or upon entry of a plea under s. 48.30 (4) (c) the court shall order the child to be examined by a psychiatrist or licensed psychologist. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination. Evaluation shall be made on an outpatient basis unless the child presents a substantial risk of physical harm to the child or others; or the child, parent or guardian, and legal counsel or guardian ad litem consent to an inpatient evaluation. Any inpatient evaluation shall be for a specified period no longer than is necessary to complete the evaluation.

(3) If the child or a parent objects to a particular physician, psychiatrist, licensed psychologist or other expert as required under this section, the court shall appoint a different physician, psychiatrist, psychologist or other expert as required under this section.

History: 1977 c. 354; 1979 c. 300

48.297 Motions before trial. (1) Any motion which is capable of determination without trial of the general issue may be made before trial.

(2) Defenses and objections based on defects in the institution of proceedings, lack of probable cause on the face of the petition, insufficiency of the petition or a citation or invalidity in whole or in part of the statute on which the petition or a citation is founded shall be raised not later than 10 days after the plea hearing or be deemed waived. Other motions capable of determination without trial may be brought any time before trial.

(3) Motions to suppress evidence as having been illegally seized or statements illegally obtained shall be made before fact-finding on the issues. The court may entertain the motion at the fact-finding hearing if it appears that a party is surprised by the attempt to introduce such evidence and that party waives jeopardy. Only the child may waive jeopardy in cases under s. 48.12, 48.125 or 48.13 (12).

(4) Although the taking of a child into custody is not an arrest, it shall be considered an arrest for the purpose of deciding motions which require a decision about the propriety of taking into custody, including but not limited to motions to suppress evidence as illegally seized, motions to suppress statements as illegally obtained and motions challenging the lawfulness of the taking into custody.

(5) If the child is in custody and the court grants a motion to dismiss based upon a defect in the petition or a citation or in the institution of the proceedings, the court may order the child continued in custody for not more than 48 hours pending the filing of a new petition or citation.

(6) A motion required to be served on a child may be served upon his or her attorney of record.

History: 1977 c. 354; 1979 c. 300, 331, 359

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

48.299 Procedures at hearings. (1) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. 48.17 (2) unless a public fact-finding hearing is demanded by a child through his or her counsel. However, the court shall refuse to grant the public hearing if the victim of an alleged sexual assault objects or, in a nondelinquency proceeding, if a parent or guardian objects. If a public hearing is not held, only the parties, their counsel, witnesses and other persons requested by a party and approved by the court may be present. Any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court. Any person who divulges any information which would identify the child or the family involved in any proceeding under this chapter shall be subject to ch. 785.

(3) If the court finds that it is in the best interest of the child, and if the child's counsel or guardian ad litem consents, the child may be temporarily excluded by the court from a hearing on a petition alleging that the child is in need of protection or services. If the court finds that a child under 7 years of age is too young to comprehend the hearing, and that it is in the best interest of the child, the child may be excluded from the entire hearing.

(4) (a) Chapters 901 to 911 shall govern the presentation of evidence at the fact-finding hearings under ss. 48.31 and 48.42.

(b) Neither common law nor statutory rules of evidence are binding at a waiver hearing under s. 48.18, a hearing for a child held in custody under s. 48.21, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders or extension of dispositional orders. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. Hearsay evidence may be admitted if it has

demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

History: 1979 c. 300; 1981 c. 353.

See note to 48.18, citing *In Interest of D.E.D.* 101 W (2d) 193, 304 NW (2d) 133 (Ct. App. 1981).

48.30 Plea hearing. (1) The hearing to determine the child's plea to a citation or a petition under s. 48.12, 48.125 or 48.13 (12), or to determine whether any party wishes to contest an allegation that the child is in need of protection or services, shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days of the filing of a petition or issuance of a citation for a child who is not being held in secure custody or within 10 days of the filing of a petition or issuance of a citation for a child who is being held in secure custody.

(2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge must be made before the end of the plea hearing or be waived, except where the child is before the court on a uniform municipal citation, issued under ch. 800 in which case the court shall inform the child that a request for a jury trial may be made at any time prior to the fact-finding hearing and within 20 days after the plea hearing. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

(3) If a petition alleges that a child is in need of protection or services under s. 48.13 (1) to (11), the nonpetitioning parties and the child, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition.

(4) If a delinquency petition under s. 48.12, a civil law or ordinance violation petition or citation under s. 48.125, or a petition alleging that a child is in need of protection or services under s. 48.13 (12) is filed, the child may plead as follows:

(a) Admit some or all of the facts alleged in the petition or citation; however, such a plea is an admission only of the commission of the acts and does not constitute an admission of delinquency or in need of protection or services;

48.30 CHILDREN'S CODE

1146

(b) Deny the facts alleged in the petition or citation. If the child stands mute or refuses to plead, the court shall direct entry of a denial of the facts alleged in the petition or citation on the child's behalf; or

(bm) Plead no contest to the allegations, subject to the approval of the court.

(c) Except pursuant to petitions or citations under s. 48.125, state that he or she is not responsible for the acts alleged in the petition by reason of mental disease or defect. This plea shall be joined with an admission under par. (a), a denial under par. (b) or a plea of no contest under par. (bm).

(5) If the child enters a plea of not responsible by reason of mental disease or mental defect the court shall order an examination under s. 48.295 and set a date for hearing as follows:

(a) If the child admits or pleads no contest to the allegations in the petition, the hearing to determine whether the child was not responsible by reason of mental disease or mental defect shall be held no more than 10 days from the plea hearing for a child held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

(b) If the child denies the allegations in the petition or citation, the court shall hold a fact-finding hearing on the allegations in the petition or citation as provided under s. 48.31. If, at the end of the fact-finding hearing, the court finds that the allegations in the petition have been proven, the court shall immediately hold a hearing to determine whether the child was not responsible by reason of mental disease or mental defect.

(c) If the court finds that the child was not responsible by reason of mental disease or mental defect, the court shall dismiss the petition with prejudice and the court may order the filing of a petition under ch. 51. If the court does not so find, the court shall proceed to a dispositional hearing.

(6) If a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days from the plea hearing for the child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing. If a citation is not contested, the court may proceed immediately to enter a dispositional order.

(7) If the citation or the petition is contested, the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days

from the plea hearing for a child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

(8) Except when a child fails to appear in response or stipulates to a citation before accepting an admission or plea of no contest of the alleged facts in a petition or citation, the court shall:

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

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

(c) Make such inquiries as satisfactorily establishes that there is a factual basis for the child's plea or parent and child's admission.

(9) If a court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 48.12 or 48.13, the judge shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquires set forth in sub. (8).

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359

48.305 Hearing upon the involuntary removal of a child. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (d) 5 without the consent of the parent or guardian, the court shall schedule a plea hearing and fact-finding hearing within 30 days of a request from the parent or guardian from whom custody was removed. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent or guardian.

History: 1977 c. 354; 1979 c. 300.

48.31 Fact-finding hearing. (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations of a petition under s. 48.12 or 48.13 (12) are supported beyond a reasonable doubt or a hearing to determine if the allegations in a petition or citation under s. 48.125 or 48.13 (1) to (11) or a petition to terminate parental rights are proved by clear and convincing evidence.

(2) The hearing shall be to the court unless the child, parent, guardian or legal custodian exercises the right to a jury trial by demanding a jury trial at any time before or during the plea

hearing. Chapters 756 and 805 shall govern the selection of jurors except that ss. 972.03 and 972.04 shall apply in cases in which the juvenile is alleged to be delinquent under s. 48.12. If the hearing involves a child victim or witness, as defined in s. 967.04 (7) (a), the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts. If the court finds that the child is not within the jurisdiction of the court or the court or jury finds that the facts alleged in the petition or citation have not been proved, the court shall dismiss the petition or citation with prejudice.

(4) The court or jury shall make findings of fact and the court shall make conclusions of law relating to the allegations of a petition filed under s. 48.13 (1) to (11). In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court shall not find that the child is suffering serious emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross-examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child delinquent or in need of protection or services under s. 48.13 (12) the court shall make findings relating to the proof of the violation of law and to the proof that the child named in the petition committed the violation alleged.

(7) At the close of the fact-finding hearing, the court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than 10 days from the fact-finding hearing for a child in secure custody and no more than 30 days from the fact-finding hearing for a child not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a 197.

See note to Art. I, sec. 5, citing *McKeiver v. Pennsylvania*, 402 US 528.

48.315 Delays, continuances and extensions. (1) The following time periods shall be excluded in computing time requirements within this chapter:

(a) Any period of delay resulting from other legal actions concerning the child, including an

examination under s. 48.295 or a hearing related to the child's mental condition, prehearing motions, waiver motions and hearings on other matters.

(b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and counsel.

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

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

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

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

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

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

History: 1977 c. 354.

48.317 Jeopardy. Jeopardy attaches:

(1) In a trial to the court, when a witness is sworn.

(2) In a jury trial, when the jury selection is completed and the jury sworn.

History: 1977 c. 354.

48.32 Consent decree. (1) At any time after the filing of a petition for a proceeding relating to s. 48.12 or 48.13 and before the entry of judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child under supervision in the child's own home or present placement. The court may establish terms and conditions applicable to the parent, guardian or legal custodian, and to the child. The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older; the parent, guardian or legal custodian; and the person filing the petition under s. 48.25. The

consent decree may include provisions for payment of the services under s. 48.36. The consent decree shall be reduced to writing and given to the parties.

(2) A consent decree shall remain in effect up to 6 months unless the child, parent, guardian or legal custodian is discharged sooner by the judge or juvenile court commissioner. Upon the motion of the court or the application of the child, parent, guardian, legal custodian, intake worker or any agency supervising the child under the consent decree, the court may, after giving notice to the parties to the consent decree and their counsel, if any, extend the decree for up to an additional 6 months in the absence of objection to extension by the parties to the initial consent decree. If the parent, guardian or legal custodian objects to the extension, the judge shall schedule a hearing and make a determination on the issue of extension.

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

(4) No child who is discharged by the court or who completes the period of supervision without reinstatement of the original petition may again be proceeded against in any court for the same offense alleged in the petition or an offense based on the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child or parent for damages arising from the child's conduct.

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

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

(b) A consent decree is granted but the petition under s. 48.12 or 48.13 is subsequently reinstated.

History: 1977 c. 354.

SUBCHAPTER VI

DISPOSITION

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

(a) The social history of the child.

(b) A recommended plan of rehabilitation or treatment and care for the child which employs the least restrictive means available to accomplish the objectives of the plan.

(c) The identity of the agency or person recommended to be made primarily responsible for provision of services mandated by the judge.

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

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

(3) **CORRECTIONAL PLACEMENT REPORTS.** A report recommending transfer of the child's custody to the subunit of the department administering corrections for placement in a secured correctional facility shall be in writing and, in addition to the information specified under sub. (1) (a) to (d), shall include a description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate.

(4) **OTHER OUT-OF-HOME PLACEMENTS.** A report recommending placement in a foster home, group home or child caring institution shall be in writing and shall include a permanency plan prepared under s. 48.38.

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

History: 1977 c. 354; 1979 c. 300; 1983 a. 399

48.331 Court reports; effect on victim. If the delinquent act would constitute a felony if committed by an adult, the person preparing the report under s. 48.33 shall attempt to determine the economic, physical and psychological effect of the delinquent act on the victim. The person preparing the report may ask any appropriate person for information. This section does not preclude the person who prepares the report from including any information for the court concerning the impact of a delinquent act on the victim. If the delinquent act would not constitute a felony but a victim has suffered bodily harm or the act involved theft or damage to property, the person preparing the report is encouraged to seek the information described in this section.

History: 1983 a 102

48.335 Dispositional hearings. (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be delinquent under s. 48.12, to have violated a civil law or ordinance under s. 48.125 or to be in need of protection or services under s. 48.13, except the court shall proceed as provided by s. 48.237 (2) if a citation is issued and the child fails to contest the citation.

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

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

History: 1977 c. 354; 1979 c. 300, 331, 359

48.34 Disposition of child adjudged delinquent. If the judge adjudges a child delinquent, he or she shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. Subsections (4m) and (8) are exclusive dispositions, except that either disposition may be combined with the disposition under sub. (4p). The dispositions under this section are:

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

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

(2m) Place the child in his or her home under the supervision of an agency, as defined under s.

48.38 (1) (a), and order the agency to provide specified services to the child and the child's family, which may include but are not limited to individual or group counseling, homemaker or parent aide services, respite care, housing assistance, day care or parent skills training.

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

(a) The home of a relative of the child.

(b) A home which need not be licensed if placement is for less than 30 days.

(c) A foster home licensed under s. 48.62 or a group home licensed under s. 48.625.

(d) A residential treatment center licensed under s. 48.60.

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

(a) A relative of the child;

(b) A county agency;

(c) A licensed child welfare agency; or

(4m) Transfer legal custody to the subunit of the department administering corrections for placement in a secured correctional facility, but only if:

(a) The child has been found to be delinquent for the commission of an act which if committed by an adult would be punishable by a sentence of 6 months or more; and

(b) The child has been found to be a danger to the public and to be in need of restrictive custodial treatment.

(4p) If the child committed a crime specified in s. 943.70, a judge may place restrictions on the child's use of computers.

(5) If the child is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the judge may order the child to repair damage to property or to make reasonable restitution for the damage or injury if the judge considers it beneficial to the well-being and behavior of the child. Any such order shall include a finding that the child alone is financially able to pay and shall allow up to 12 months for the payment. Objection by the child to the amount of damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered.

(6) If the child is in need of special treatment and care the judge may order the child's parent, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails or is financially unable to provide the care, the judge may order the care provided by an

appropriate agency whether or not legal custody has been taken from the parents.

(7) The judge may restrict, suspend or revoke the operating privilege, as defined in s. 340.01 (40), of a child who is adjudicated delinquent under a violation of any law in which a motor vehicle is involved. 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.

(8) If the judge finds that no other court services or alternative services are needed or appropriate it may impose a maximum forfeiture of \$50 based upon a determination that this disposition is in the best interest of the child and in aid of rehabilitation, except that the court may raise the maximum ceiling on the amount of the forfeiture by \$50 for every subsequent adjudication of delinquency concerning an individual child. Any such order shall include a finding that the child alone is financially able to pay the forfeiture and shall allow up to 12 months for payment. If the child fails to pay the forfeiture, the judge may vacate the forfeiture and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the judge may suspend any license issued under ch. 29 for not less than 30 days nor more than 90 days, or suspend the child's operating privilege as defined in s. 340.01 (40) for not less than 30 days nor more than 90 days. If the judge suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with a notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the first 30 days after the license is suspended, the suspension shall be reduced to the minimum period of 30 days. If it is paid after the end of the 30 days, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the child.

(9) **SUPERVISED WORK PROGRAM.** (a) The judge may utilize as a dispositional alternative court-ordered participation in a supervised work program. The judge shall set standards for the program within the budgetary limits established by the county board. The work program may provide the child reasonable compensation reflecting a reasonable market value of the work performed, or it may consist of uncompensated community service work, and shall be administered by the county department of public welfare or a community agency approved by the judge.

(b) The supervised work program shall be of a constructive nature designed to promote the rehabilitation of the child, shall be appropriate to the age level and physical ability of the child and shall be combined with counseling from a member of an agency staff or other qualified person. The program may not conflict with the child's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the child's offense.

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

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

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

(11) **TRANSFER TO FOREIGN COUNTRIES UNDER TREATY.** If a treaty is in effect between the United States and a foreign country, allowing a child adjudged delinquent who is a citizen or national of the foreign country to transfer to the foreign country, the governor may commence a transfer of the child if the child and the child's parent, guardian, legal custodian or the court request.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39; 1977 c. 156, 354, 447; 1979 c. 300; 1981 c. 29; 1983 a. 399, 438.

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.

Court erred in using and relying upon immunized testimony in disposition proceeding. State v. J. H. S. 90 W (2d) 613, 280 NW (2d) 356 (Ct. App. 1979).

Where noncriminal conduct was proscribed as condition of probation and juvenile was not notified of condition, revocation for violation of condition denied due process. In re G. G. D. v. State, 97 W (2d) 1, 292 NW (2d) 853 (1980).

"Danger to the public" under (4m) (b) includes threat of property damage or loss. In Interest of B. M. 101 W (2d) 12, 303 NW (2d) 601 (1981).

Restitution for unrecovered stolen property is authorized by (5). In Interest of I. V. 109 W (2d) 407, 326 NW (2d) 127 (Ct. App. 1982).

Court may order 51.42 or 51.437 board to provide care or treatment to minor found to be in need of protection or services. 72 Atty. Gen. 30.

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

48.343 Disposition of child adjudged to have violated a civil law or an ordinance. Except as provided by s. 48.344, if the court finds that the child violated a civil law or an ordinance, it shall enter an order making one or more of the following dispositions:

(1) Counsel the child or the parent or guardian.

(2) Impose a forfeiture not to exceed \$25. Any such order shall include a finding that the child alone is financially able to pay and shall allow up to 12 months for the payment. If a child fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or suspend the child's operating privilege as defined in s. 340.01 (40), for not less than 30 days nor more than 90 days. The court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the first 30 days after the license is suspended, the suspension shall be reduced to the minimum period of 30 days. If it is paid thereafter, the court shall immediately notify the department, which will thereupon return the license to the person.

(3) Order the child to participate in a supervised work program under s. 48.34 (9).

(4) If the violation has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the court may order the child to make repairs of the damage to property or reasonable restitution for the damage or injury if the court considers it beneficial to the well-being and behavior of the child. Any such order requiring payment for repairs or restitution shall include a finding that the child alone is financially able to pay and shall allow up to 12 months for the payment. Objection by the child to the amount of damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered.

(5) If the violation is related to unsafe use of a boat, order the child to attend a safety course under s. 30.74 (1).

(6) If the violation is of ch. 29, suspension of the license or licenses of the child issued under that chapter for not more than one year or until the child is 18 years of age, whichever occurs first.

(7) If the violation is related to the unsafe use of firearms, order the child to attend a course under the hunter education and firearm safety program under s. 29.225.

(8) If the violation is one under ch. 350 concerning the use of snowmobiles, order the child to attend a safety course under s. 350.055.

History: 1977 c. 354; 1979 c. 300, 331; 1983 a. 420

48.344 Disposition; intoxicating liquor and beer violations. (1) In this section:

(a) "Court" means a municipal court or the court assigned to exercise jurisdiction under this chapter.

(b) "Violation" means a violation of s. 125.07 (4) (a) or (b), 125.08 (3) (b) or 125.09 (2) or a local ordinance which strictly conforms to one of those statutes.

(2) If a court finds a child committed a violation it shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not more than \$50, suspension of the child's operating privilege as provided under s. 343.30 (6) (b) 1 or the child's participation in a supervised work program under s. 48.34 (9).

(b) For a violation committed within 12 months of a previous violation, a forfeiture of not more than \$100, suspension of the child's operating privilege as provided under s. 343.30 (6) (b) 2 or the child's participation in a supervised work program under s. 48.34 (9).

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than \$150, revocation of the child's operating privilege as provided under s. 343.30 (6) (b) 3 or the child's participation in a supervised work program under s. 48.34 (9).

(3) If the child alleged to have committed the violation is within 3 months of his or her 18th birthday, the court assigned to exercise jurisdiction under this chapter may, at the request of the district attorney or on its own motion, dismiss the citation without prejudice and refer the matter to the district attorney for prosecution under s. 125.07 (4). The child is entitled to a hearing only on the issue of his or her age.

History: 1979 c. 331, 359; 1981 c. 79 s. 18; 1983 a. 74 ss. 1 to 4, 32.

48.345 Disposition of child adjudged in need of protection or services. If the judge finds that the child is in need of protection or services, it shall enter an order deciding one or more of the dispositions of the case as provided in s. 48.34 under a care and treatment plan except that the plan shall not:

(1) Transfer the custody of the child to the subunit of the department administering corrections;

(2) Order restitution;

(3) Order payment of a forfeiture;

(4) Restrict, suspend or revoke the driving privileges of the child; or

(5) Place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have exceptional educational needs in facilities which exclusively treat those categories of children.

48.345 CHILDREN'S CODE

1152

(6) Order the child to participate in a supervised work program under s. 48.34 (9).

History: 1971 c. 125; 1977 c. 354; 1979 c. 300.

48.35 Effect of judgment and disposition. (1)

The judge shall enter a judgment setting forth his or her findings and disposition in the proceeding.

(a) A judgment in proceedings on a petition under this chapter is not a conviction of a crime, shall not impose any civil disabilities ordinarily resulting from the conviction of a crime and shall not operate to disqualify the child in any civil service application or appointment.

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

1. In sentencing proceedings after conviction of a felony or misdemeanor and then only for the purpose of a presentence study and report;

2. In a proceeding in any court assigned to exercise jurisdiction under this chapter; or

3. In a court of civil or criminal jurisdiction while it is exercising the jurisdiction of a family court and is considering the custody of children.

(c) Disposition by the court assigned to exercise jurisdiction under this chapter of any allegation 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 paragraph does not affect proceedings in criminal court which have been transferred under s. 48.18.

(e) If a child is found to be not responsible by reason of mental disease or defect the petition shall be dismissed with prejudice.

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

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39; 1977 c. 29; 1977 c. 354 ss. 59, 63; 1977 c. 447, 449; 1979 c. 32, 300, 331, 359.

Where evidence of prior rape is introduced at rape trial to prove identity, testimony of prior rape victim is admissible notwithstanding that defendant was tried as juvenile for prior rape. See note to 906.09, citing *Sanford v. State*, 76 W (2d) 72, 250 NW (2d) 348.

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

48.355 Dispositional orders. (1) INTENT. In any order under s. 48.34 or 48.345 the judge shall decide on a placement and treatment finding based on evidence submitted to the judge. The disposition shall employ those means necessary to maintain and protect the child's well-being which are the least restrictive of the rights

of the parent or child and which assure the care, treatment or rehabilitation of the child and the family. Wherever possible the family unit shall be preserved and there shall be a policy of transferring custody from the parent only where there is no less drastic alternative. If information under s. 48.331 has been provided in a court report under s. 48.33, the court shall consider that information when deciding on a placement and treatment finding.

(2) **CONTENT OF ORDER.** (a) In addition to the order, the judge shall make written findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition of each individual coming before him or her. If the child is placed outside the home, the findings of fact shall include a finding that reasonable efforts have been made to prevent the need to remove the child from his or her home, or, if applicable, that reasonable efforts have been made to make it possible for the child to return to his or her home.

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

1. The identity of the agency which is to be primarily responsible for the provision of the services mandated by the judge and, if custody is to be transferred to effect the treatment plan, the identity of the legal custodian.

2. If the child is placed outside the home, the name of the place or facility, including transitional placements, where the child shall be cared for or treated, except that in the case of individual foster home treatment where the name and address of the foster parent shall be furnished to the court and the parent within 21 days of the order, except that if, after a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent would result in imminent danger to the child or the foster parent, the judge may order the name and address of the prospective foster parents withheld from the parent or guardian.

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

4. A designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee.

5. For a child placed outside his or her home pursuant to an order under s. 48.34 (3) or 48.345, a permanency plan under s. 48.38 if one has been prepared.

(2e) **PERMANENCY PLANS; FILING; AMENDED ORDERS; COPIES.** (a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is

consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 48.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

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

(c) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child's parent or guardian and to the child or the child's counsel or guardian ad litem.

(2m) TRANSITIONAL PLACEMENTS. The court order may include the name of transitional placements, but may not designate a specific time when transitions are to take place. The procedures of ss. 48.357 and 48.363 shall govern when such transitions take place. However, the court may place specific time limitations on interim arrangements made for the care of the child pending the availability of the dispositional placement.

(3) PARENTAL VISITATION. If, after a hearing on the issue with due notice to the parent or guardian, the judge finds that it would be in the best interest of the child, the judge may set reasonable rules of parental visitation.

(3m) ORDERS BASED ON EVIDENCE. Dispositional orders under s. 48.343 or 48.344 shall be based upon the evidence except this subsection does not require a dispositional hearing for the disposition of an uncontested citation.

(4) TERMINATION OF ORDERS. All orders under this section shall terminate at the end of one year unless the judge specifies a shorter period of time. Extensions or revisions shall terminate at the end of one year unless the judge specifies a shorter period of time. No extension under s. 48.365 of an original dispositional order may be granted for a child whose legal custody has been transferred to the department under s. 48.34 (4m) if the child is 18 years of age or older when the original dispositional order terminates. Any order made before the child reaches the age of majority shall be effective for a time up to one year after its entry unless the judge specifies a shorter period of time.

(5) EFFECT OF COURT ORDER. Any party, person or agency who provides services for the

child under this section shall be bound by the court order.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538

48.356 Duty of court to warn. (1) Whenever the judge orders a child to be placed outside his or her home because the child has been adjudged to be in need of protection or services under s. 48.345, 48.357, 48.363 or 48.365, the judge shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child to be returned to the home including any changes required in the parent's conduct, the nature of the home and the child's conduct.

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

History: 1979 c. 330; 1983 a. 399

48.357 Change in placement. (1) The person or agency primarily responsible for implementing the dispositional order may request a change in the placement of the child, whether or not the change requested is authorized in the dispositional order and shall cause written notice to be sent to the child or the child's counsel or guardian ad litem, parent, guardian and legal custodian. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. Any party receiving the notice under this subsection or notice of the specific foster placement under s. 48.355 (2) (b) 2 may obtain a hearing on the matter by filing an objection with the court within 10 days of receipt of the notice. Placements shall not be changed until 10 days after such notice is sent to the court unless the parent, guardian or legal custodian and the child, if 12 or more years of age, sign written waivers of objection, except that placement changes which were authorized in the dispositional order may be made immediately if notice is given as required in this subsection. In addition, a hearing is not required for placement changes authorized in the dispositional order except where an objection filed by a party who received notice alleges that new information is available which affects the advisability of the court's dispositional order.

(2) If emergency conditions necessitate an immediate change in the placement of a child

placed outside the home, the person or agency primarily responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without the prior notice provided in sub. (1). The notice shall, however, be sent within 48 hours after the emergency change in placement. Any party receiving notice may demand a hearing under sub. (1). In emergency situations, the child may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days, as well as in any placement authorized under s. 48.34 (3).

(2m) The child, parent, guardian, legal custodian or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may request a change in placement under this subsection. The request shall contain the name and address of the place of the new placement requested and shall state what new information is available which affects the advisability of the current placement. This request shall be submitted to the court. In addition, the court may propose a change in placement on its own motion. The court shall hold a hearing on the matter prior to ordering any change in placement under this subsection if the request states that new information is available which affects the advisability of the current placement, unless written waivers of objection to the proposed change in placement are signed by all parties entitled to receive notice under sub. (1) and the court approves. If a hearing is scheduled, the court shall notify the child, parent, guardian, legal custodian and all parties who are bound by the dispositional order at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be attached to the notice. If all the parties consent, the court may proceed immediately with the hearing.

(3) If the proposed change in placement would involve placing the child with the subunit of the department administering corrections notice shall be given as provided in sub. (1). A hearing shall be held, unless waived by the child, parent, guardian and legal custodian, before the judge makes a decision on the request. The child shall be entitled to counsel at the hearing, and any party opposing or favoring the proposed new placement may present relevant evidence and cross-examine witnesses. The proposed new placement may be approved only if the judge finds, on the record, that the conditions set forth in s. 48.34 (4m) have been met.

(4) When the child is placed with the subunit of the department administering corrections,

the department may, after an examination under s. 48.50, place the child in a secured correctional facility or on aftercare, either immediately or after a period of placement in a secured correctional facility. The department shall send written notice of the change to the parent, guardian, legal custodian and committing court.

(5) If a child placed with the subunit of the department administering corrections has been released on aftercare, revocation of aftercare shall not require prior notice under sub. (1). A child on aftercare status may be taken into custody only as provided in ss. 48.19 to 48.21. The child shall be entitled to representation by counsel at all stages of the revocation proceeding. The hearing shall be conducted under ch. 227 by an independent officer of the department. Review of a revocation decision shall be by certiorari to the court by whose order the child was placed with the subunit of the department administering corrections.

(6) No change in placement may extend the expiration date of the original order.

History: 1977 c. 354; 1979 c. 300.

48.36 Payment for services. **(1)** If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.34 or 48.345, the duty of the parent or guardian or, in the case of a transfer of guardianship and custody under s. 48.839 (4), the duty of the former guardian to provide support shall continue even though the legal custodian or the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the child shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department, a county department of public welfare or a board under s. 46.23, 51.42 or 51.437, shall be subject to the payment provisions under ss. 46.03 (18) and 46.10 (14). However, if at the time the child is placed into such residential services a court order for support already exists under ch. 52 or 767 the amount of parental payment to be applied to residential services shall not be less than the amount specified in that court order.

(2) If a child whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological or psychiatric treatment by order of the court, the cost thereof, if ordered by the court,

shall be a charge upon the county. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child as the court may order based on the ability of the parent or guardian to pay. This subsection shall be subject to s. 46.03 (18).

(3) In determining county liability, this section does not apply to services specified in ch. 115 or provided by mental health boards under ch. 51.

History: 1977 c. 354; 1979 c. 221; 1981 c. 81.

48.363 Revision of dispositional orders. The parent, child, guardian or legal custodian or any person or agency bound by a dispositional order may request a revision in the order which does not involve a change in placement, or the court may on its own motion propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available which affects the advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter if the request or court proposal indicates that new information is available which affects the advisability of the court's dispositional order and prior to any revision of the dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves. If a hearing is held, the court shall notify the parent, child, guardian and legal custodian, and all parties bound by the dispositional order at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

History: 1977 c. 354; 1979 c. 300.

48.365 Extension of orders. (1) The parent, child, guardian, legal custodian, any person or agency bound by the dispositional order, or the court on its own motion, may request an extension of an order under s. 48.355. The request shall be submitted to the court which entered the order. No order under s. 48.355 may be extended except as provided in this section.

(2) No order may be extended without a hearing. The court shall notify the child or the child's guardian ad litem or counsel, and the child's parent, guardian, legal custodian and all the parties present at the original hearing of the time and place of the hearing.

(2g) (a) At the hearing the person or agency primarily responsible for providing services to the child shall file with the court a written report

stating to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation or care and treatment.

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

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

2. An evaluation of the child's adjustment to the placement and of any progress the child has made, suggestions for amendment of the permanency plan, a description of efforts to return the child to his or her home, including efforts of the parents to remedy factors which contributed to the child's placement and, if continued placement outside of the child's home is recommended, an explanation of why returning the child to his or her home is not feasible.

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

(2m) (a) Any party may present evidence relevant to the issue of extension. The judge shall make findings of fact and conclusions of law based on the evidence. An order shall be issued under s. 48.355.

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

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

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

(5) All orders shall be for a specified length of time not to exceed one year.

(6) If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days.

(7) Nothing in this section may be construed to allow any changes in placement or revocation of aftercare. Revocation and other changes in placement may take place only under s. 48.357.

History: 1977 c. 354; 1979 c. 300; 1983 a. 351, 399, 538.

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

48.365 CHILDREN'S CODE

1156

Extension under (6) does not deprive juvenile of liberty without due process. In Interest of S. D. R. 109 W (2d) 567, 326 NW (2d) 762 (1982).

48.37 Costs. No costs or penalty assessments may be assessed against any child in a court assigned to exercise jurisdiction under this chapter. Courts of civil and criminal jurisdiction exercising jurisdiction under s. 48.17 may assess the same costs and penalty assessment against children as they may assess against adults, except that witness fees shall not be charged to the child.

History: 1977 c. 354, 449; 1979 c. 300, 359

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

History: 1971 c. 105; 1977 c. 354 s. 64; 1977 c. 449.

SUBCHAPTER VII**PERMANENCY PLANNING; RECORDS**

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

(a) "Agency" means the department, a county agency under s. 48.58 or a child welfare agency licensed under s. 48.60.

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

(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each child living in a foster home, group home, child-caring institution, secure detention facility or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if one of the following conditions exists:

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

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

(c) The child is under supervision of an agency under s. 48.64 (2) or pursuant to a court order under s. 48.355.

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

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

(f) The child's care is paid under s. 49.19.

(3) TIME. The agency shall file the permanency plan with the court within 60 days after the date on which the child was first held in physical custody or placed outside of his or her home under a court order, except under either of the following conditions:

(a) If the child is alleged to be delinquent and is being held in a secure detention facility, juvenile portion of a county jail or shelter care facility, and the agency intends to recommend that custody of the child be transferred to the subunit of the department administering corrections for placement in a secured correctional facility, the agency is not required to submit the permanency plan unless the court does not accept the agency's recommendation. If the court places the child in any facility outside of his or her home other than a secured correctional facility, the agency shall file the permanency plan with the court within 60 days after the date of disposition.

(b) If the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.

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

(a) The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, and to make it possible for the child to return home.

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

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

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate.

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

(f) The services that will be provided to the child, the child's family and the child's foster parent or operator of the facility where the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

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

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

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

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

(5) PLAN REVIEW. (a) Either the court or, if the court does not elect to do so, a panel consisting of at least 3 persons appointed by the agency that prepared the permanency plan shall review the permanency plan every 6 months from the date on which the child was first held in physical custody or placed outside of his or her home. At least one person on each panel shall be a person who is not employed by the agency that prepared the permanency plan and who is not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(b) The court or the agency shall notify the parents of the child, the child if he or she is 12 years of age or older and the child's foster parent or operator of the facility in which the child is living of the time and place of the review and of the fact that they may participate in the review. The notice shall be provided in writing not less than 10 days before the review and a copy shall be filed in the child's case record.

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

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

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

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

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

5. The date by which it is likely that the child will be returned to his or her home, placed for adoption, placed under legal guardianship or otherwise permanently placed.

6. If the child has been placed outside of his or her home for 2 years or more, the appropriateness of the permanency plan and the circumstances which prevent the child from being returned to his or her home, being placed for adoption or being placed in sustaining care.

(d) Notwithstanding s. 48.78, a person appointed to a review panel who is not an employee of an agency may have access to the child's records for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court, the child or the child's counsel or guardian ad litem, the child's parent or guardian and the child's foster parent or operator of the facility where the child is living.

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

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of children outside of their homes.

(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of children.

History: 1983 a 399.

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

History: 1977 c 449.

48.396 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 or according to s. 48.293. 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) Records of the court assigned to exercise jurisdiction under this chapter and of courts exercising jurisdiction under s. 48.17 (2) 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

48.396 CHILDREN'S CODE

1158

order of the court assigned to exercise jurisdiction under this chapter. Upon request of the department to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department. Upon request of the federal government to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the federal agency.

(3) This section does not apply to proceedings for violation of chs. 340 to 349 and 351 or any county or municipal ordinance enacted under ch. 349, except that this section does apply to proceedings for violations of ss. 342.06 (2) and 344.48 (1), and s. 346.67 when death or injury occurs.

(4) When a court revokes, suspends or restricts a child's operating privilege under s. 48.17 (2), 48.237, 48.34 (7) or (8), 48.343 (2), 48.344 (2) or 346.93, the department of transportation shall not disclose information concerning or relating to the revocation, suspension or restriction to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency, or the minor whose operating privilege is revoked, suspended or restricted, or his or her parent or guardian. Persons entitled to receive this information shall not disclose the information to other persons or agencies.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538.

Discovery of juvenile police and court records discussed State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 W (2d) 435, 267 NW (2d) 309 (1978).

See note to 967.06, citing State ex rel. S. M. O. 110 W (2d) 447, 329 NW (2d) 275 (Ct. App. 1982).

A licensing agency may not ask an applicant about juvenile delinquency records. 67 Atty. Gen. 327.

Juvenile officers are not required to provide information concerning juvenile to school officials. School does not violate (1) by using information obtained from officer to take disciplinary action against student as long as school does not reveal reason for action. 69 Atty. Gen. 179.

SUBCHAPTER VIII**TERMINATION OF PARENTAL RIGHTS**

48.40 Definitions. In this subchapter:

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

(2) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obliga-

tions existing between parent and child are permanently severed.

History: 1979 c. 330.
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.

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

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

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent and is satisfied that the consent is informed and voluntary; or

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

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

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

rights and that he or she voluntarily disclaims all rights to the child, including the right to notice of proceedings under this subchapter.

(3) The consent of a minor or incompetent person to the termination of his or her parental rights shall not be accepted by the court unless it is joined by the consent of his or her guardian ad litem. If the guardian ad litem joins in the consent to the termination of parental rights with the minor or incompetent person, minority or incompetence shall not be grounds for a later attack on the order terminating parental rights.

History: 1979 c 330; 1981 c 384; 1983 a. 352, 447.
Circuit court record did not support finding that minor parent's consent was voluntary and informed. Minimum information which must be determined on the record set forth. In Interest of D. L. S. 112 W (2d) 180, 332 NW (2d) 293 (1983)

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

(1) **ABANDONMENT.** (a) Abandonment may be established by a showing that:

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

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer; or

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

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

(c) A showing under par. (a) that abandonment has occurred may be rebutted by other evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

(2) **CONTINUING NEED OF PROTECTION OR SERVICES.** Continuing need of protection or services may be established by a showing of all of the following:

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

(b) That the agency responsible for the care of the child and the family has made a diligent effort to provide the services required by the court.

(c) That the child has been outside the home for a cumulative total period of one year or longer pursuant to such orders, the parent has substantially neglected, wilfully refused or been unable to remedy the conditions which resulted in the removal of the child from the home and there is a substantial likelihood that the parent will not remedy these conditions in the future.

(3) **CONTINUING PARENTAL DISABILITY.** Continuing parental disability may be established by a showing that:

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

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

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

(4) **CONTINUING DENIAL OF VISITATION RIGHTS.** Continuing denial of visitation rights may be established by a showing that:

(a) The parent has been denied visitation rights by court order in an action affecting the family;

(b) At least 2 years have elapsed since the order denying visitation rights was issued and the court has not subsequently modified its order so as to permit visitation rights; and

(c) The parent would not be entitled to visitation rights if he or she were to seek such rights at the time the petition for termination of parental rights is filed.

(5) **CHILD ABUSE.** Child abuse may be established by a showing that the parent has exhibited a pattern of abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and a showing of either of the following:

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

48.415 CHILDREN'S CODE

1160

(b) That, on more than one occasion, a child has been removed from the parent's home by the court under s. 48.345 after an adjudication that the child is in need of protection or services and a finding by the court that sexual or physical abuse was inflicted by the parent.

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility may be established by a showing that a child is a nonmarital child who has not been adopted or whose parents have not subsequently intermarried under s. 767.60, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and:

1. The person or persons who may be the father of the child have been given notice under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the court and that such person or persons have never had a substantial parental relationship with the child; or

2. That although paternity to the child has been adjudicated under s. 48.423, the father did not establish a substantial parental relationship with the child prior to the adjudication of paternity although the father had reason to believe that he was the father of the child and had an opportunity to establish a substantial parental relationship with the child.

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

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538.

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.

Termination order under 48.40 (2), 1975 stats., was not supported by sufficient findings where findings merely repeated statutory language and made no determination of best interests of child. *Termination of Parental Rights to T. R. M.* 100 W (2d) 681, 303 NW (2d) 581 (1981).

Parent had constitutionally protected rights to care, custody and management of child. *In Interest of J. L. W.* 102 W (2d) 118, 306 NW (2d) 46 (1981).

Statutory provisions under which court may terminate all rights of parents to minor were not, as applied to parent convicted of second-degree murder, void for vagueness. *Termination of Parental Rights to A. M. K.* 105 W (2d) 91, 312 NW (2d) 840 (Ct. App. 1981).

Sub. (6) (a) 2 does not unconstitutionally discriminate against fathers. Mere fact that unwed father was jailed since 5th month of pregnancy did not preclude termination of parental rights. *In Interest of Baby Girl K.* 113 W (2d) 429, 335 NW (2d) 846 (1983).

Process is constitutionally due natural parent at state-initiated parental rights termination proceeding; three-factor test discussed. *Santosky v. Kramer*, 455 US 745 (1982).

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

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

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

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

(c) 1. A statement that consent will be given to termination of parental rights as provided in s. 48.41; or

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

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

(a) The parent or parents of the child.

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

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

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

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

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

(d) Any other person to whom notice is required to be given by ch. 822, excluding foster parents.

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

(2m) NOTICE NOT REQUIRED. Notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault or of incest if a physician attests to his or

her belief that a sexual assault or incest has occurred.

(3) **CONTENTS OF SUMMONS.** The summons shall:

(a) Contain the name and birth date of the child, and the nature, location, date and time of the initial hearing

(b) Advise the party, if applicable, of his or her right to legal counsel, regardless of ability to pay under s. 48.23 and ch. 977.

(c) Advise the parties of the possible result of the hearing and the consequences of failure to appear or respond.

(4) **MANNER OF SERVING SUMMONS AND PETITION.** (a) *Personal service.* A copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 10 days before the date of the hearing, except that service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

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

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

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

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

information shall include the following, if known:

a. The name of the party or parties to whom notice is being given;

b. A description of the party or parties;

c. The former address of the party or parties;

d. The approximate date and place of conception of the child; and

e. The date and place of birth of the child.

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

(c) The notice under par. (a) or (b) shall also inform parties that the parental rights of a parent or alleged parent who fails to appear may be terminated, of the party's right to have an attorney present and that if a person desires to contest termination of parental rights and believes that he or she cannot afford an attorney, the person may ask the state public defender to represent him or her.

History: 1973 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447

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

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

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

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

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

(6) (a) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and pater-

48.422 CHILDREN'S CODE

1162

nity has not been established, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

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

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

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

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

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

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

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

(9) (a) If a petition for termination of the rights of a birth parent, as defined under s. 48.432 (1) (a), is filed by a person other than an agency enumerated under s. 48.069 (1) or (2) or

if the court waives the report required under s. 48.425, the court shall order any parent whose rights may be terminated to file with the court the information specified under s. 48.425 (1) (am).

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

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

Court erred by failing to inform parents of right to jury trial or to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 W (2d) 432, 342 NW (2d) 410 (1984).

See note to Art. I, sec. 1, citing *Lassiter v. Dept. of Social Services*, 452 US 18 (1981).

48.423 Rights of persons alleging paternity.

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

History: 1979 c. 330

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

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

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

(a) The court may exclude the child from the hearing; and

(b) The hearing shall be closed to the public.

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

(4) If grounds for the termination of parental rights are found the court shall proceed immediately to hear evidence and motions related to

the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if:

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

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

History: 1979 c. 330.

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

- (a) The social history of the child.
- (am) A medical record of the child on a form provided by the department which shall include:

1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.

2. A report of any medical examination which either birth parent had within one year before the date of the petition.

3. A report describing the child's prenatal care and medical condition at birth.

4. The medical and genetic history of the child and any other relevant medical and genetic information.

(b) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned to the family, and the steps the person or agency has taken to effect this return.

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

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

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

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

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

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

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

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359; 1983 a. 471

48.426 Standard and factors. (1) COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) STANDARD. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

History: 1979 c 330.

See note to 48.86, citing In Matter of Adoption of R.P.R. 98 W (2d) 613, 297 NW (2d) 833 (1980)

48.427 Dispositions. (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

(2) The court may dismiss the petition if it finds that the evidence does not warrant the termination of parental rights.

(3) The court may enter an order terminating the parental rights of one or both parents. If the rights of both parents or of the only living parent are terminated, the court shall either:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department of social services in counties having a population of 500,000 or more.

2. A county department of social services licensed to accept guardianship under s. 48.57 (1) (hm).

3. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

4. The department.

5. A relative with whom the child resides, if the relative has filed a petition to adopt the child.

6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1 to 4 and custody of the child to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(4) The court may enter an order terminating the parental rights of one or both parents and placing the child in sustaining care under s. 48.428.

(5) The guardian appointed under sub. (3) shall report to the court on the status of the child 6 months after the date the order was made and thereafter every year on the anniversary of the date that the first report was made until the child is adopted.

(6) If an order is entered under sub. (3) or (4), the court shall:

(a) Inform each birth parent, as defined under s. 48.432 (1) (a), whose rights have been terminated of the provisions of ss. 48.432 and 48.433.

(b) Forward to the department:

1. The name and date of birth of the child whose birth parent's rights have been terminated.

2. The names and current addresses of the child's birth parents, guardian and legal custodian.

3. The medical and genetic information obtained under s. 48.422 (9) or 48.425 (1) (am) or (2).

History: 1979 c 330; 1981 c 81, 359.

48.428 Sustaining care. (1) A court may place a child in sustaining care whenever the court has terminated the parental rights of the parent or parents of the child and the court finds that the child is unlikely to be adopted or that adoption is not in the best interest of the child.

(2) When a court places a child in sustaining care, the court shall transfer legal custody of the child to the county department of social services or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3) (a) 1 to 4 and place the child in the home of a licensed foster parent with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent shall be a sustaining parent with the powers and duties specified in sub. (3).

(3) Subject to the authority of the guardian and legal custodian of the child and to any treatment or dispositional plans for the child established by the court, the sustaining parent has the rights and responsibilities necessary for the day-to-day care of the child, including but not limited to:

(a) The authority to consent to routine and emergency health care for the child.

(b) The authority to sign the child's application for a license under s. 343.15.

(c) The authority to approve the child's participation in school and youth group activities.

(d) The authority to travel out of state with the child and consent to the child's travel out of state.

(e) The authority to act as the child's parent under ss. 115.80, 115.81 and 118.125.

(4) Before a licensed foster parent may be appointed as a sustaining parent, the foster parent shall execute a contract with the agency responsible for providing services to the child, in which the foster parent agrees to provide care for the child until the child's 18th birthday.

unless the placement order is changed by the court because the court finds that the sustaining parents are no longer able or willing to provide the sustaining care or the court finds that the behavior of the sustaining parents toward the child would constitute grounds for the termination of parental rights if the sustaining parent was the birth parent of the child.

(5) The agency appointed as legal custodian for a child in sustaining care shall report to the court annually on the status of the child.

(6) The court may order or prohibit visitation by a birth parent of a child placed in sustaining care.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359 s. 16.

48.43 Court orders; contents and effect. (1) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. The order shall contain:

(a) The identity of the agency which will receive guardianship and custody of the child upon termination, if the rights of both parents are terminated, and which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting; and

(b) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible, and the plan for treatment.

(2) An order terminating parental rights permanently severs all legal rights and duties between the parent and the child.

(3) If only one parent consents under s. 48.41 or if the grounds specified in s. 48.415 are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent.

(4) A certified copy of the order terminating parental rights shall be furnished by the court to the agency given guardianship for placement or adoption of the child or to the person or agency given custodianship or guardianship for placement of the child in sustaining care. The court shall, upon request, furnish a certified copy of the child's birth certificate and a transcript of the testimony in the termination of parental rights hearing to the same person or agency.

(5) Any guardian receiving a child for placement for adoption or for sustaining care appointed under this subchapter 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 the guardian and on each anniversary date of the order. The court order may specify details regarding particular

aspects of the care and treatment, development and special needs of the child to be included in the guardian's report.

(6) Judgments under this subchapter terminating parental rights are final and appealable under s. 48.47.

(7) If the agency specified under sub. (1) (a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county agency specified under s. 48.56 (1). The court shall transfer the child's custody to the agency specified in the petition. The department shall remain the child's guardian.

History: 1979 c. 330; 1983 a. 27, 219, 286.

Judicial Council Note, 1983: Sub. (6) is amended to eliminate the appeal deadline of 30 days after entry of order so that the appeal time deadline is that specified in s. 48.47, stats. [Bill 151-S]

Appeal process in termination case must be commenced within 30 days after order is entered. In Interest of JD, 106 W (2d) 126, 315 NW (2d) 365 (1982).

48.432 Access to medical information. (1) In this section:

(a) "Birth parent" means either:

1. The mother designated on the child's original birth certificate.

2. One of the following:

a. The adjudicated father.

b. If there is no adjudicated father, the husband of the mother at the time the child is conceived or born, or when the parents intermarry under s. 767.60.

(b) "Child" means a person whose birth parent's rights have been terminated in this state at any time, or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(2) (a) The department shall maintain all information obtained under s. 48.427 (6) (b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department any relevant medical or genetic information about the child or the child's birth parents, and the department shall maintain the information in the centralized birth record file.

(3) (a) The department shall release the medical information under sub. (2) without charge, except for the actual cost of reproduction, to any of the following persons upon request:

1. A child 18 years of age or older.

2. An adoptive parent of an adopted child.

3. The guardian or legal custodian of a child.

4. The offspring of a child if the requester is 18 years of age or older.

5. An agency or social worker assigned to provide services to the child or place the child for adoption.

(b) Before releasing the information under par. (a), the department shall delete the name and address of the birth parent and the identity of any provider of health care to the child or to the birth parent.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about a child whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such a child, and the information is not on file with the department, the person may request that the department conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the child has or may have acquired a genetically transferable disease or that the child's medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department shall undertake a diligent search for the child's parents. Upon request by the department, a county agency under s. 48.56 (1) or agency licensed under s. 48.60 shall cooperate in the search and shall make its records available to the department. The department may not require an agency to conduct the search, but may designate an agency to do so with the agency's consent.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department or agency designated by the department under par. (b) shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent's identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department shall notify the requester, without disclos-

ing the birth parent's identity or location, and the requester may petition the circuit court to order the birth parent to disclose the information. The court shall grant the motion for good cause shown.

(7) (a) If the department or another agency that maintains records relating to the adoption of a child or the termination of parental rights receives a report from a physician stating that a birth parent or another child of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the child of the existence of the disease, if he or she is 18 years of age or over, or notify the child's guardian, custodian or adoptive parent if the child is under age 18.

(b) If the department or agency receives a report from a physician that a child has acquired or may have a genetically transferable disease, the department or agency shall notify the child's birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) The department shall adopt rules to implement this section.

History: 1981 c. 359; 1983 a. 447, 471.

48.433 Access to identifying information about parents. (1) In this section, "birth parent" has the meaning given under s. 48.432 (1)

(a)

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department an affidavit authorizing the department to provide the child with his or her original birth certificate and with any other available information about the birth parent's identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department in writing.

(3) Any person 21 years of age or over whose birth parent's rights have been terminated in this state or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982, may request the department to provide the person with the following:

(a) The person's original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department shall require the requester to provide adequate identification.

(5) The department shall disclose the requested information in either of the following circumstances:

(a) The department has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6) (a) If the department does not have on file an affidavit from each known birth parent, it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request. If any information has been provided under sub. (5), the department is not required to conduct a search.

(b) Upon request by the department, a county department under s. 48.56 (1) or an agency licensed under s. 48.60 shall cooperate in the search and shall make its records available to the department. The department may not require an agency to conduct the search, but may designate an agency to do so with the agency's consent.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department or agency designated by the department under par. (b) shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7) (a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.

2. The date of the request.

3. The fact that the birth parent has the right to file with the department the affidavit under sub. (2).

(b) Within 3 working days after contacting a birth parent, the department shall send the birth

parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8) (a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department shall so inform the requester. The department may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information it has on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).

2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department.

(8m) If the department may not disclose the information requested under this section, it shall provide the requester with any nonidentifying social history information about either of the birth parents that it has on file.

(9) The requester may petition the circuit court to order the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her

actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall adopt rules to implement this section.

History: 1981 c. 359, 391; 1983 a. 471.

48.435 Custody of children. The mother of a nonmarital child has legal custody of the child unless the court grants legal custody to another person or transfers legal custody to an agency.

History: 1979 c. 330; 1983 a. 447.

SUBCHAPTER IX

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 a condition of a child as described in s. 48.12 or 48.13, and over persons subject to an order under s. 48.355 (4).

History: 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354

48.45 Contributing to the adverse condition of children. (1) If in the hearing of a case of a child alleged to be in a condition described in s. 48.12 or 48.13 it appears that any person 18 or older has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the child, the judge may make orders with respect to the conduct of such person in his or her relationship to the child, including orders determining the ability of the person to provide for the maintenance or care of the child and directing when, how and where funds for the maintenance or care shall be paid.

(2) No order to any person 18 or older under sub. (1) may be entered until the person is given an opportunity to be heard upon the allegation against him or her and the contemplated order of the court. The court shall cause notice of the time, place and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases in the 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 court under this section may be proceeded against for contempt of court. If the person's conduct involves a crime, the person may be proceeded against under the criminal law.

(3) If it appears at a court hearing that any person 18 or older has violated s. 947.15, the

judge shall refer the record to the district attorney for 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 the prior reference by the judge to the district attorney, as in other criminal cases.

(4) An act or failure to act contributes to a condition of a child as described in s. 48.12 or 48.13, although the child is not actually adjudicated to come within the provisions of s. 48.12 or 48.13, if the natural and probable consequences of that act or failure to act would be to cause the child to come within the provisions of s. 48.12 or 48.13.

History: 1977 c. 354, 449

SUBCHAPTER X

REHEARING AND APPEAL

48.46 New evidence. The parent, guardian or legal custodian of the child or the child whose status is adjudicated by the court may at any time within one year after 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. Upon a showing that such evidence does exist, the court shall order a new hearing.

History: 1977 c. 449; 1979 c. 300

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. (1) Any person aggrieved by a final judgment or final order of the court under this chapter may appeal within the time period specified in s. 808.04 (3) or (4).

(2) A child who has filed a notice of appeal shall be furnished a transcript of the proceedings appealed from or as much of it as is requested without cost upon the filing of an affidavit that the child or the person who is legally responsible for his or her care and support is financially unable or the person responsible is unwilling to purchase the transcript.

History: 1971 c. 40; 1977 c. 187, 354; Sup. Ct. Order, 83 W (2d) xiii; 1977 c. 449; 1983 a. 219

Judicial Council Note, 1983: Sub (1) is amended to harmonize the right to appeal language with s. 808.03 (1), stats., which provides that only a final judgment or final order is appealable as of right, and to clarify that the time to appeal is specified in s. 808.04 (3) and (4), stats. The last sentence of sub (1) is repealed as surplusage. Appeals are to the court of appeals as provided in chs. 752, 808 and 809, stats. [Bill 151-S]

SUBCHAPTER XI

DEPARTMENT

48.48 Authority of department. The department shall have authority:

(1) To promote the enforcement of the laws relating to delinquent children, nonmarital children and children in need of protection or services including developmentally disabled children 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 cooperation with the courts, county agencies, licensed child welfare agencies and with parents and other individuals interested in the welfare of children

(2) To assist in extending and strengthening child welfare services with appropriate federal agencies and in conformity with the federal social security act and in cooperation with parents, other individuals and other agencies so that all children needing such services are reached.

(3) To accept legal custody of children transferred to it by the court under s. 48.355 and guardianship of children when appointed by the court, and to provide special treatment and care when directed by the court.

(4) To provide appropriate care and training for children in its legal custody; including serving those children in their own homes, placing them in licensed foster homes in accordance with s. 48.63 or licensed group homes, contracting for their care by licensed child welfare agencies or replacements to juvenile correctional institutions in accordance with the administrative rules established under ch. 227, except that the department shall not purchase the educational component of private day treatment programs for children in its custody unless the department, the school board as defined in s. 115.001 (7) and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the department and the school district shall be resolved by the state superintendent of public instruction.

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

- (a) Is at least 18 years of age;
- (b) Was when he or she reached age 18 in legal custody of the department;
- (c) Is less than 19 years of age; 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 court;

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

(9) (a) 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;

(b) To license shelter care facilities as provided in s. 48.66.

(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 who is or is or likely to be a nonmarital child, to see that the interests of the child are safeguarded, that steps are taken to establish the child's paternity and that there is secured for the child, if possible, the care, support and education the child would receive if he or she were a marital child.

(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 under this paragraph shall be made in accordance with s. 48.975. Payments shall be made from the appropriation under s. 20.435 (4) (dd).

(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 (3) (ho) and (4) (dd) 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.

(15) To license group homes as provided in s. 48.625.

(16) Beginning January 1, 1980, to establish and enforce standards for services provided under ss. 48.34 and 48.345 (1) and (5).

History: 1973 c. 90, 333; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 354, 418, 447, 449; 1979 c. 34 ss. 833m, 834, 2102 (20) (a); 1979 c. 221, 300; 1983 a. 27 s. 2202 (20); 1983 a. 189 s. 329 (17); 1983 a. 447.

Allegation that department failed to adopt rules or to exercise supervision over local social service agency and that those failures led to deprivation of child custody without due process stated cause of action for deprivation of civil rights. *Roe v. Borup*, 500 F Supp. 127 (1980).

48.49 Notification by court of transfer to department; information for department. (1)

When the court transfers legal custody of a child to the department, the court shall immediately notify the department of that 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) When the court transfers legal custody of a child to the department, the court shall also immediately transfer to the department a copy of the report submitted to it under s. 48.33 and shall immediately notify the child's last school district in writing of its obligation under s. 118.125 (4).

(3) 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, including the information specified in sub. (2), within 5 working days of the request.

History: 1977 c. 449; 1979 c. 205

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 or her 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 aftercare placement for the child.

History: 1977 c. 354.

48.52 Facilities for care of children in care of department. (1) FACILITIES MAINTAINED OR USED FOR CHILDREN.

The department may maintain or use the following facilities for children in its care:

(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 contract for and pay for the use of other public facilities or private facilities for the care and treatment of children in its care; but placement of children in private or public facilities not under its jurisdiction does not terminate the legal custody of the department. Placements in institutions for the mentally ill or developmentally disabled shall be made in accordance with ss. 48.14 (5) and 48.63 and 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 precludes the placement of a child in any of the above facilities so long as the child is under the age of 18 and is legally under sentence to the department under chs. 939 to 948.

(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; 1977 c. 354; 1979 c. 89.

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.

Foster homes leased by the department pursuant to this section are immune from local zoning to the extent that the zoning conflicts with the department's possessory use of

property under ch. 48, subject to 13.48 (13). The lessor remains responsible for property tax. 65 Atty. Gen. 93.

48.53 Duration of control over delinquents.

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.

History: 1971 c. 213 s. 5; 1975 c. 39; 1979 c. 295.

48.54 Records. The department shall keep a complete record on each child in its legal custody. This record shall include the information received from the 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.

History: 1977 c. 449.

48.55 State adoption information exchange.

The department shall establish a state adoption information exchange for the purpose of finding adoptive homes for children with special needs who do not have permanent homes. The department shall adopt rules governing the adoption information exchange, and may contract with individuals and private agencies for adoption information exchange services.

History: 1983 a. 27.

SUBCHAPTER XII

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 department of social services 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 ad-

ministered by the staff of the juvenile court prior to January 1, 1955.

History: 1975 c. 307; 1977 c. 271.

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 delinquent children, nonmarital children and children in need of protection or services including developmentally disabled children 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. Unless provided by another agency, county agencies shall offer social services to the caretaker of any child who is referred to the agencies as coming within the conditions specified in this paragraph. This duty shall be discharged in cooperation with the 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 court under s. 48.355 and to provide special treatment and care if ordered by the court;

(c) To provide appropriate protection and services for children in its care, including providing services for children and their families in their own homes, placing the children in licensed foster homes or licensed group homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for them by licensed child welfare agencies, except that the county agency shall not purchase the educational component of private day treatment programs unless the county agency, the school board as defined in s. 115.001 (7) and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the county agency and the school district shall be resolved by the state superintendent of public instruction;

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

(e) If a county department of social services in a county with a population of 500,000 or more, to place children in a county children's home in the county under policies adopted by the county board of supervisors, to accept guardianship of children when appointed by the

court and to place children under its guardianship for adoption;

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

(g) Upon request of the department to provide service for any child in the care 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 court and to place children under its guardianship for adoption;

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

(j) To use in the media a picture or description of a child in the guardianship of the department or the agency for the purpose of finding adoptive parents for that child.

(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.

(3) (a) From the reimbursement received under s. 49.52 (1) (d), counties may provide funding for the maintenance of any child who:

1. Is 18 years of age or older;

2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;

3. Received funding under s. 49.52 (1) (d) immediately prior to his or her 18th birthday; and

4. Is living in a foster home, group home or child caring institution.

(b) The funding provided for the maintenance of a child under par. (a) shall be in an amount equal to that to which the child would receive under s. 49.52 (1) (d) if the child were 17 years of age.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447.

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.

County agencies providing child welfare services do not have authority under (1) or 48.52 to lease real property for foster home use. 65 Atty Gen 93.

48.58 County children's home in populous counties. (1) Any existing county children's home in counties with a population of 500,000 or more may do any of the following:

(b) Provide care for children in need of protection or services and delinquent children; provided that the delinquent children are placed in separate facilities referred by the county

welfare department or department of social services;

(c) Provide temporary shelter care for children in need of protection or services and delinquent children; provided that the delinquent children are placed in separate facilities.

(d) Provide temporary shelter care for children taken into custody under s. 48.19.

History: 1973 c. 90; 1975 c. 39, 189, 224; 1977 c. 29, 194, 271, 354, 418, 447, 449; 1979 c. 34 s. 2102 (20) (a); 1979 c. 300; 1981 c. 20.

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 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.

History: 1977 c. 449.

See note to 19.21, citing 70 Atty Gen 196.

SUBCHAPTER XIII

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).

(g) A licensed group home.

(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; 1979 c. 300.

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

(1) To accept legal or physical custody of children transferred to it by the court under s. 48.355;

(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 or physical custody and, if licensed to do so, to place children in licensed foster homes and licensed group homes;

(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 court, and to place children under its guardianship for adoption;

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

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

History: 1977 c. 354 s. 101; 1977 c. 418, 449; 1979 c. 300

SUBCHAPTER XIV

FOSTER HOMES

48.62 Licensing of foster homes. (1) No person may receive, with or without transfer of legal custody, 4 or fewer children to provide care and maintenance for those children unless he or she 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) Relatives as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) or a guardian of a child, who provide care and maintenance for a

child, are not required to obtain the license specified in this section. The department or a county agency or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home to those relatives who have no duty of support under s. 52.01 (1) (a) and who request a license to operate a foster home for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63. Relatives with no duty of support who seek licenses to operate foster homes are subject to the department's licensing rules.

History: 1977 c. 354 s. 101; 1977 c. 418, 447; 1981 c. 20.
Foster child in family owned foster home under one year dispositional order is resident of household for insurance purposes. A G v Travelers Ins. Co. 112 W (2d) 18, 331 NW (2d) 643 (Ct. App. 1983).

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.

State-licensed foster homes are immune from local zoning ordinances restricting number of unrelated occupants of single family dwellings. 66 Atty. Gen. 342.

48.625 Licensing of group homes. No person may receive, with or without transfer of legal custody, 5 to 8 children, to provide care and maintenance for those children unless that person obtains a license to operate a group home from the department.

History: 1977 c. 418.

NOTE: See s. 48.66 for the department's licensing authority.

48.627 Foster parent insurance. The department shall, from the appropriations under s. 20.435 (4) (db) and (pd), purchase insurance for licensed foster parents to cover the liability of the foster parents, to the extent not provided in the foster parent's homeowner's insurance policy, for injuries sustained or property damage caused by foster children in the foster parent's care, subject to the limitations contained in the policy. The department may also purchase insurance to cover the cost of damages sustained by a foster parent or a member of the foster parent's family as a result of the act of a foster child in the foster parent's care, to the extent not covered by other insurance and subject to the limitations contained in the policy.

History: 1979 c. 221; 1981 c. 20; 1983 a. 27

48.63 Restrictions on placements. (1) Acting pursuant to court order or voluntary agreement, the child's parent or guardian or the department, a county agency performing child welfare services under s. 48.56 (1) or a child welfare agency licensed to place children in foster homes may place a child or negotiate or act as intermediary for the placement of a child

48.63 CHILDREN'S CODE

in a foster home or group home. Voluntary agreements under this subsection may not be used for placements in facilities other than foster or group homes and may not be extended. A foster home placement under a voluntary agreement may not exceed 6 months. A group home placement under a voluntary agreement may not exceed 15 days. These time limitations do not apply to placements made under ss. 48.34 and 48.345. Voluntary agreements may be made only under this subsection and shall be in writing and shall specifically state that the agreement can be terminated at any time by the parent or by the child if the child's consent to the agreement is required. The child's consent to the agreement is required whenever the child is 12 years of age or older.

(2) No person may place a child or offer or hold himself or herself out as able to place a child, except as provided in this section. Enrollment of a child by a parent or guardian in an educational institution shall not constitute a placement for the purposes of this section.

(3) Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under ss. 48.833, 48.835, 48.837 and 48.839.

(4) A permanency plan under s. 48.38 is required for each child placed in a foster home under sub. (1). If the child is living in a foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the placement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over and to the child's parent or guardian. If the agency which arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, it shall prepare a revised permanency plan and file it with the court prior to the date of the hearing on the proposed placement.

History: 1977 c. 354, 449; 1979 c. 300; 1981 c. 81; 1983 a. 351, 399.

48.64 Placement of children in foster homes and group homes. (1) FOSTER HOME AND GROUP HOME AGREEMENTS. If the department, a county agency specified in s. 48.56, or a child welfare agency authorized to do so, places a child in a foster home under a court order or voluntary agreement under s. 48.63, it shall enter into a written agreement with the head of the home. The 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. If a child has

been in a foster home or group home for 6 months or more, the department or agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child shall not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days from the receipt of the notice, whichever is later, unless the safety of the child requires it. If the safety of the child requires earlier removal, s. 48.19 shall apply. If a child is removed from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

(2) SUPERVISION OF FOSTER HOME AND GROUP HOME PLACEMENTS. Every child in a foster home or group 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 group homes, or of the department.

(4) ORDERS AFFECTING THE HEAD OF A HOME OR THE CHILDREN. (a) Any decision or order issued by a division of the department of health and social services, a county welfare department or department of social services, or a child welfare agency affecting the head of a foster or group home 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 head of the home 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 head of the home and to the division, the county department or child welfare agency. They shall be entitled to be represented at the hearing. At all hearings conducted under this subsection, the head of the home, or a representative of the head of the home, 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 head of the home or the 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 head of the home, 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 circuit court for the county where the child is has jurisdiction upon petition of any interested party over a child who is placed in a foster home or group home. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of said agency involving the 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; 1977 c. 271, 354, 418, 447, 449

Foster parents' rights were violated by department's failure to give mandatory written notice under (1) but, since adoptive placement was found to be in children's best interest, foster parents' rights were subordinated to paramount interest of children. In matter of Z, 81 W (2d) 194, 260 NW (2d) 246

Family liberty interest of foster parents. 1978 WLR 510

SUBCHAPTER XV

DAY CARE PROVIDERS

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

(c) A person employed to come to the home of the child's parent or guardian for less than 24 hours a day.

History: 1983 a. 193

Distinction created by (2) (b) between private parochial schools and other private schools is unconstitutional. Milwaukee Montessori School v. Percy, 473 F Supp. 1358 (1979)

48.651 Certification of day care providers.

Each county agency providing child welfare services under subch. XII shall certify, according to the standards adopted by the department under s. 46.03 (21), each day care provider from whom it purchases services under s. 46.036 on or after January 1, 1985, and each day care provider that provides day care services to parents pursuant to a voucher provided under s. 46.98 (3) (c) on or after January 1, 1985, unless the provider is a day care center licensed under s. 48.65 or is established or contracted for under s. 120.13 (14).

History: 1983 a. 193

48.653 Information for day care providers.

The department shall provide each day care center licensed under s. 48.65 and each county agency providing child welfare services with a brochure containing information on basic child care and the licensing and certification requirements for day care providers. Each county agency shall provide each day care provider that it certifies with a copy of the brochure.

History: 1983 a. 193

SUBCHAPTER XVI

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, group homes, as required by s. 48.625, shelter care facilities, as required by s. 48.48 and day care centers, as required by s. 48.65. The department may license foster homes, as provided by s. 48.62, and may license and supervise county departments of social services or public welfare in accordance with the procedures specified in ss. 48.67 to 48.74.

History: 1975 c. 307; 1977 c. 29, 271, 418, 447; 1979 c. 330

48.67 Rules governing child welfare agencies, day care centers, foster homes, group homes, shelter care facilities and county departments of social services or 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, group homes, shelter care facilities and county departments of social services or 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. Child welfare agencies and group homes shall report upon application for renewal of licensure all formal complaints regarding their operation filed under s. 48.745 (2) and the disposition of each.

History: 1975 c. 307; 1977 c. 29, 205, 271, 418, 447; 1979 c. 300.

48.675 Foster care education program. (1) DEVELOPMENT OF PROGRAM. The department shall develop a foster care education program to provide specialized training for persons operating family foster homes. Participation in the program shall be voluntary and shall be limited to persons operating foster homes licensed under s. 48.62 and caring for children with special treatment needs.

(2) **APPROVAL OF PROGRAMS.** The department shall promulgate rules for approval of programs to meet the requirements of this section. Such programs may include, but need not be limited to: in-service training; workshops and seminars developed by the department or by county departments of social services; seminars and courses offered through public or private education agencies; and workshops, seminars and courses pertaining to behavioral and developmental disabilities and to the development of mutual support services for foster parents. The department may approve programs under this subsection only after consideration of relevant factors including level of education, useful or necessary skills, location and other criteria as determined by the department.

(3) **SUPPORT SERVICES.** The department shall provide funds from the appropriation under s. 20.435 (3) (ho) and (4) (dd) to enable foster parents to attend education programs approved under sub. (2) and shall promulgate rules concerning disbursement of such funds. Moneys disbursed under this subsection may be used for the following purposes:

(a) Care of residents of the foster home during the time of participation in an education program.

(b) Transportation to and from an education program.

(c) Course materials and fees

(d) Specialized workshops, seminars, and courses pertaining to behavioral and developmental disabilities.

History: 1977 c. 418; 1979 c. 34 s. 2102 (20) (a); 1983 a. 27 s. 2202 (20)

48.68 Investigation of applicant; granting of license. (1) 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.

(2) Before renewing the license of any child welfare agency or group home, the department shall consider all formal complaints filed under s. 48.745 (2) and the disposition of each during the current license period.

(3) Within 10 working days after receipt of an application for initial licensure of a child welfare agency or group home, the department shall notify the city, town or village planning commission, or other appropriate city, town or village agency if there is no planning commission, of receipt of the application. The department shall request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards which may affect the health and safety of the residents of the child welfare agency or group home. No license may be granted to a child welfare agency or group home until the 30-day period has expired or until the department receives the response of the planning commission or agency, whichever is sooner. In granting a license the department shall give full consideration to such hazards determined by the planning commission or agency.

(4) Prior to initial licensure of a residential facility operated by a child welfare agency or of a group home, the applicant for licensure shall make a good faith effort to establish a community advisory committee consisting of representatives from the child welfare agency or proposed group home, the neighborhood in which the proposed residential facility or group home will be located and a local unit of government. The community advisory committee shall provide a forum for communication for those persons interested in the proposed residential facility or group home. Any committee established under this subsection shall continue in existence after licensure to make recommendations to the licensee regarding the impact of the residential facility or group home on the neighborhood. The department shall determine compliance with this subsection both prior to and after initial licensure.

History: 1977 c. 205, 418; 1981 c. 72

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 social services or 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; 1977 c. 271.

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 SOCIAL SERVICES OR PUBLIC WELFARE AND COUNTY CHILDREN'S BOARDS. Licenses to county departments of social services or 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; 1977 c. 271.

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, group home and day care center licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license.

History: 1979 c. 300.

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, 48.625 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.

History: 1979 c. 300.

48.745 Formal complaints regarding child welfare agencies and group homes. (1) If a complaint is received by a child welfare agency or group home, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

(2) Any individual may file a formal complaint under this section regarding the general operation of a child welfare agency or group home and shall not be subject to reprisals for doing so. All formal complaints regarding child welfare agencies and group homes shall be filed with the county public welfare department on forms supplied by the county department unless the county department designates the department to receive formal complaints. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the bureau within the department which licenses child welfare agencies and group homes.

(3) Upon receipt of a formal complaint, the county department may investigate the premises and records and question the licensee, staff and residents of the child welfare agency or group home involved. The county department shall attempt to resolve the situation through negotiation and other appropriate means.

(4) If no resolution is reached, the county department shall forward the formal complaint, results of the investigation and any other pertinent information to the unit within the department which is empowered to take further action under this chapter against the facility. The unit

48.745 CHILDREN'S CODE

shall review the complaint and may conduct further investigation, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the final disposition of the complaint and the reasons therefor. If the complaint is dismissed, the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

(5) If the county department designates the department to receive formal complaints, the subunit under s. 46.03 (22) (c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

History: 1977 c. 205, 418; 1979 c. 175.

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, 48.625, 48.63 or 48.65 may be fined not more than \$500 or imprisoned not more than one year in county jail or both.

History: 1977 c. 418 s. 929 (18); 1979 c. 300.

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, 48.625, 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; 1977 c. 418 s. 929 (18); 1979 c. 300.

SUBCHAPTER XVII**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 as provided under ss. 48.432, 48.433 and 48.93 or 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. This section does not prohibit the department or a county department of public welfare or social services from using in the media a picture or description of a child in the guardianship of the department or a county department of public welfare or social services for the purpose of finding adoptive parents for that child.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7.

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.

SUBCHAPTER XVIII**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.

SUBCHAPTER XIX

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. (1) The following persons are eligible to adopt a minor if they are residents of this state:

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

(b) An unmarried adult.

(3) When practicable and if requested by the birth parent, the adoptive parents shall be of the same religious faith as the birth parents of the person to be adopted.

(4) No person may be denied the benefits of this subchapter because of a religious belief in the use of spiritual means through 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.

History: 1981 c. 359 s. 16; 1983 a. 350.

48.83 Jurisdiction and venue. (1) The court of the county where the child is, upon the filing of a petition for adoption or for the adoptive placement of a child, has jurisdiction over the child until the petition is withdrawn, denied or granted. Venue shall be in the county where the child is at the time the petition is filed. The court may transfer the case to a court in the county in which the proposed adoptive parents reside.

(2) If the adoption is denied, jurisdiction over the child shall immediately revert to the court which appointed the guardian, unless the appointing court is a court of another state or foreign jurisdiction, in which case the court of the county where the child is shall have jurisdiction.

History: 1975 c. 39; 1977 c. 449 s. 497; 1981 c. 81, 391.

48.833 Placement of children for adoption by agencies. The department, a county agency under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home without a court order if the department or agency is the guardian of the child or makes the placement at the request of another agency which is the guardian of the child.

History: 1981 c. 81, 384.

48.835 Placement of children with relatives for adoption. (1) DEFINITION. In this section and s. 48.837, "custody" means physical custody of a child by the child's parent not in violation of a custody order issued by a court. "Custody" does not include physical custody during visitation periods subject to a court order.

(2) **ADOPTIVE PLACEMENT.** A parent having custody of a child may place the child for adoption in the home of a relative without a court order.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED; EXCEPTION. (a) If the child's parent has not filed a petition for the termination of parental rights under s. 48.42, the relative with whom the child is placed shall file a petition for the termination of the parents' rights at the same time the petition for adoption is filed, except as provided under par. (b).

(b) If the person filing the adoption petition is a stepparent with whom the child and the child's parent reside, the stepparent shall file only a petition to terminate the parental rights of the parent who does not have custody of the child.

(4) HEARINGS. Notwithstanding s. 48.90 (1) (a), the court may hold the hearing on the adoption petition immediately after entering the order to terminate parental rights under s. 48.427 (3).

History: 1981 c. 81

48.837 Placement of children with nonrelatives for adoption. (1) ADOPTIVE PLACEMENT. A parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a person who is not a relative of the child if the home is licensed as a foster home under s. 48.62.

(2) PETITION FOR PLACEMENT. The petition for adoptive placement shall be verified and shall allege all of the following:

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

(b) The name, address and age of the birth parents and the proposed adoptive parents.

(c) The identity of any person or agency which solicited, negotiated or arranged the placement of the child with the proposed adoptive parents.

(d) A report of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or on their behalf in connection with the birth of the child, the placement of the child with the proposed adoptive parents, the medical or hospital care received by the child or by the child's mother in connection with the birth of the child and any other expenses, including the estimated legal expenses, of either the child's parent or the proposed adoptive parents. The report shall be itemized and shall show the services relating to the adoption or to the placement of the child for adoption which were received by the proposed adoptive parents, by either parent, by the child or by any other person to whom payment was made by or on behalf of the proposed adoptive parents. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other

person or organization receiving any funds from the proposed adoptive parents in connection with the adoption or the placement of the child with them.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED. The petition under sub. (2) shall be filed with a petition under s. 48.42 for the voluntary consent to the termination of any existing rights of the petitioning parent or parents.

(4) RESPONSIBILITIES OF COURT. On the filing of the petitions under this section the court:

(a) Notwithstanding s. 48.422 (1), shall schedule a hearing within 60 days of the date of filing, except that the hearing may not be held before the birth of the child.

(b) Shall appoint counsel or guardians ad litem when required under s. 48.23.

(c) Shall order the department or a county agency under s. 48.57 (1) (e) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested and to report its recommendation to the court at least 5 days before the hearing on the petition. If a licensed child welfare agency has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the agency in place of the court-ordered report required under this paragraph.

(d) May, at the request of a petitioning parent, or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), order the department or a county agency under s. 48.56 to place the child, pending the hearing on the petition, in any home licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents.

(e) Shall, before hearing the petitions under subs. (2) and (3), ascertain whether the child's paternity has been adjudicated in this state or another jurisdiction. If any person has filed a declaration of paternal interest under s. 48.025, the court shall determine the rights of that person. If the child's paternity has not been adjudicated and if no person has filed a declaration under s. 48.025, the court shall attempt to ascertain the paternity of the child. The court may not proceed with the hearing on the petitions under this section unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.

(5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or over, and each petitioner shall attend the hearings on the petitions under this section. The court may, for good cause, waive the requirement that the child attend the hearing.

(6) ORDER OF HEARINGS. (a) The court shall hold the hearing on the petition under sub. (2) before the hearing on the petition required under sub. (3). After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4) (c) and make a conclusion as to whether placement in the home is in the best interest of the child.

(b) If the proposed placement is approved, the court shall proceed immediately to a hearing on the petition required under sub. (3). If the parental rights of the parent are terminated, the court shall order the child placed with the proposed adoptive parent or parents and appoint as guardian of the child the department, a county agency under s. 48.57 (1) (e) or (hm) or an agency licensed to accept guardianship under s. 48.61 (5).

(7) INVESTIGATION AND CARE COSTS. The proposed adoptive parents shall pay the cost of any investigation ordered under sub. (4) (c), according to a fee schedule established by the department based on ability to pay, and shall also, if the adoption is completed, pay the cost of any care provided for the child under sub. (4) (d).

History: 1981 c 81.

Adoption and termination proceedings in Wisconsin: A reply proposing limiting judicial discretion Cooper and Nelson, 66 MLR 641 (1983)

48.839 Adoption of foreign children. (1) BOND REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction, before bringing the child into this state for the purpose of adopting the child, shall file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before he or she is adopted.

(b) By filing the bond required under par. (a), the child's guardian and the surety submit to the jurisdiction of the court in the county in which the guardian resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served. Their liability on the bond may be enforced without the commencement of an independent action.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the guardian and the surety to show cause why judgment on the bond should not be entered for the department. If neither the guardian nor the surety appear for the hearing on the order to show cause, or if the court concludes after the

hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the guardian and the surety.

(d) If custody of the child is transferred under sub. (4) (b) to a county department or child welfare agency before the child is adopted, the department shall periodically bill the guardian and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond against the guardian and surety.

(e) This section does not preclude the department or any other agency given custody of a child under sub. (4) (b) from collecting under s. 46.03 (18) (b) or 46.10 from the former guardian for costs in excess of the amount recovered under the bond incurred in enforcing the bond and providing care and maintenance for the child until he or she reaches age 18 or is adopted.

(f) The department may waive the bond requirement under this subsection.

(2) EVIDENCE OF AVAILABILITY FOR ADOPTION REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction and who intends to bring the child into this state for the purpose of adopting the child shall file with the department a certified copy of the judgment or order of a court of the foreign jurisdiction or other instrument having the effect under the laws of the foreign jurisdiction of freeing the child for adoption. If the instrument is not a judgment or order of a court, the guardian shall also file with the department a copy of the law under which the instrument was issued, unless the department waives this requirement. The guardian shall also file English translations of the court judgment or order or other instrument and of the law. The department shall return the originals to the guardian and keep on file a copy of each document.

(b) If the guardian files a judgment or order of a court under par. (a), the department shall review the judgment or order. If the department determines that the judgment or order has the effect of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the guardian as an adoptive parent, if a licensed child welfare agency has been identified to provide the services required under sub. (5) and if the guardian has filed the bond required under sub. (1), the department shall certify to the U.S. immigration and naturalization service that all preadop-

tive requirements of this state that can be met before the child's arrival in the United States have been met.

(c) If the guardian files an instrument other than a judgment or order of a court under par. (a), the department shall review the instrument. If the department determines that the instrument has the effect under the laws of the foreign jurisdiction of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the adoptive parents, if a licensed child welfare agency has been identified to provide the services required under sub. (5) and if the guardian has filed the bond required under sub. (1), the department shall certify to the U.S. immigration and naturalization service that all preadoptive requirements of this state that can be met prior to the child's arrival in the United States have been met.

(3) PETITION FOR ADOPTION OR TERMINATION OF PARENTAL RIGHTS REQUIRED. (a) Within 60 days after the arrival of a child brought into this state from a foreign jurisdiction for the purpose of adoption, the individual who is the child's guardian shall file a petition to adopt the child, a petition to terminate parental rights to the child, or both. If only a petition to terminate parental rights to the child is filed under this paragraph, the individual guardian shall file a petition for adoption within 60 days of the order terminating parental rights. The individual guardian shall file with the court the documents filed with the department under sub. (2) (a).

(b) Except as provided in par. (a) and sub. (4) (a), the termination of a parent's parental rights to a child who is a citizen of a foreign jurisdiction is not required prior to the child's adoption by his or her guardian.

(c) If a petition for adoption is filed under par. (a), the individual guardian filing the petition shall file a copy of the petition with the department at the time the petition is filed with the court. If the individual guardian filed an instrument other than a court order or judgment under sub. (2) (a), the department may make a recommendation to the court as to whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption.

(d) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed an instrument other than a court order or judgment under sub. (2) (a), the court shall determine whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption. The court shall presume that the instrument has that effect unless there are substantial irregularities on the

face of the document or unless the department shows good cause for believing that the instrument does not have that effect. If the court determines that the instrument does not have the effect of freeing the child for adoption, the court shall order the petitioner to file a petition to terminate parental rights under s. 48.42 within 10 days.

(e) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed a court order or judgment under sub. (2) (a), the court order or judgment shall be legally sufficient evidence that the child is free for adoption.

(4) TRANSFER OF GUARDIANSHIP; FORFEITURE OF BOND. If a guardian does not file a petition as required under sub. (3) (a) or (d), or if the petition for adoption under sub. (3) is withdrawn or denied, the court:

(a) Shall transfer guardianship of the child to the department or to an agency under s. 48.57 (1) (e) or (hm) or 48.61 (5) and order the guardian to file a petition for termination of parental rights under s. 48.42 within 10 days.

(b) Shall transfer legal custody of the child to a county department under s. 48.56 (1) or child welfare agency licensed under s. 48.60.

(c) Shall order the guardian who filed the bond under sub. (1) (a) to show cause why the bond should not be forfeited.

(d) May order that physical custody of the child remain with a suitable individual with whom the child has been living.

(5) CHILD WELFARE SERVICES REQUIRED. Any child welfare agency licensed under s. 48.60 that negotiates or arranges the placement of a child for adoption under this section shall provide services to the child and to the proposed adoptive parents until the child's adoption is final.

History: 1981 c. 81

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.

48.871 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) Upon the filing of a petition for adoption, the court shall schedule a hearing within 90 days of the filing. 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 under sub. (2), to the department when its recommendation is required by s. 48.89 and to the child if the child is 12 years of age or over.

(2) (a) Except as provided under par. (c), when a petition to adopt a child is filed, the court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. The court shall order one of the following to conduct the investigation:

1. If an agency has guardianship of the child, the guardianship agency, unless the agency has already filed its recommendation under s. 48.85 and has filed with the recommendation a report of an investigation as required under this paragraph.

2. If no agency has guardianship of the child and a relative other than a stepparent has filed the petition for adoption, the department, a county agency under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency.

4. If the child is a citizen of a foreign jurisdiction and is under the guardianship of an indi-

vidual, the agency which conducted the home study required under federal law prior to the child's entry into the United States.

(b) The agency making the investigation shall file its report with the court at least 10 days before the hearing unless the time is reduced for good cause shown by the petitioner. The report shall be part of the record of the proceedings.

(c) If a stepparent has filed a petition for adoption and no agency has guardianship of the child, the court shall order a county agency under s. 48.56 or, with the consent of the department or a licensed child welfare agency, order the department or the agency to conduct a screening, consisting of no more than one interview with the petitioner and a check of the petitioner's background through public records, including records maintained by the department or any county agency under s. 48.981. The agency that conducts the screening shall file a report of the screening with the court within 30 days. After reviewing the report, the court may proceed to act on the petition, may order the county agency to conduct an investigation as described under par. (a) (intro.) or may order the department or a licensed child welfare agency to make the investigation if the department or agency consents.

(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; 1977 c. 271; 1981 c. 81, 384; 1983 a. 190.

48.89 Recommendation of the department.

(1) The recommendation of the department is required for the adoption of the following children:

(a) A nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60;

(b) A child who has no living parents or whose parents have had their rights legally terminated if the child is not under the guardianship of an agency under s. 48.57 (1) (e) or (hm) or 48.61 (5).

(2) The department shall make its recommendation to the court at least 10 days before the 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 department of social services

48.89 CHILDREN'S CODE

or public welfare 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; 1977 c. 271; 1981 c. 81; 1983 a. 447.

48.90 Filing of adoption petition; preadoption residence. (1) A petition for adoption may be filed at any time if:

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

(b) The petitioner is the child's stepparent.

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

(d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

(2) Except as provided under sub. (1), no petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months or more.

(3) No petition for adoption may be filed unless the petitioners have complied with all applicable provisions of this chapter relating to adoptive placements.

History: 1973 c. 263; 1977 c. 354; 1977 c. 418 s. 929 (18); 1981 c. 81.

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) (a) In an adoption proceeding for a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, the court shall establish whether the rights of any persons who have filed declarations of paternal interest under s. 48.025 have been determined or whether paternity has been adjudicated in this state or in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed, prior to any action on the petition for adoption, to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration under s. 48.025.

(b) Except as provided under s. 48.839 (3) (b), the termination of a parent's parental rights is required as provided in subch. VIII prior to the adoption of the child.

(3) If after the hearing and a study of the report required by s. 48.88 and the recommen-

dation 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; 1979 c. 330; 1981 c. 81; 1983 a. 447. 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. An appeal from a final judgment or final order in an adoption proceeding shall be taken within the time period specified in s. 808.04 (1).

History: Sup Ct. Order, 67 W (2d) 773; 1977 c. 187 s. 135; 1983 a. 219.

Judicial Council Note, 1983: This section is amended to replace the appeal deadline of 40 days after entry of order by the standard time specified in s. 808.04 (1), stats., for greater uniformity. [Bill 151-S]

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 birth parents, unless the birth 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; 1981 c. 359 s. 16.

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 and may not be disclosed except under sub. (1g) or (1r), s. 46.03 (29), 48.432, 48.433 or 48.57 (1) (j), or by order of the court for good cause shown.

(1g) At the time a court enters an order granting an adoption, it shall provide the adoptive parents with a copy of the child's medical record under s. 48.425 (1) (am) or with any information provided to the court under s. 48.422 (9) or 48.425 (2), after deleting the names and addresses of the child's birth parents and the identity of any provider of health care to the child or the child's birth parents.

(1r) Any agency which has placed a child for adoption shall, at the request of an adoptive parent or of the child after he or she has reached age 18, provide the requester without charge, except for the actual cost of reproduction, with medical or genetic information about the child or about the child's birth parents which it has on file and with nonidentifying social history information about the child's family which it has on file, after deleting the names and addresses of the birth parents and any provider of health care to the child or the child's birth parents.

(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.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471
Adoption records reform: Impact on adoptees 67 MLR 110 (1983)

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 birth 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.

History: 1981 c. 359 s. 16.

48.95 Withdrawal or denial of petition. Except as provided under s. 48.839 (3) (b), if the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter 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 social services 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.

History: 1977 c. 271, 449; 1981 c. 81

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

History: 1981 c. 359 s. 16.

48.97 Adoption orders of other jurisdictions.

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 department has approved the placement. A child whose adoption would otherwise be valid under this section may be readopted in accordance with this chapter if readoption is necessary under federal law to permit the child to enter this country.

History: 1971 c. 187; 1981 c. 81.

48.975 Subsidized adoption. (1) DEFINITION.

In this section, "subsidized adoption" means payments by the department to the parents of an adopted child which are designed to assist in the cost of care of a child after legal adoption.

(2) APPLICABILITY. The department may subsidize an adoption only when it has determined that such assistance is necessary to assure the child's adoption.

(3) TYPES. Either type of adoption subsidy specified in this subsection may be granted alone or in conjunction with the other.

(a) *Maintenance.* For support of a child who was in foster care immediately prior to adoption, the maintenance subsidy shall be equivalent to the amount of that child's foster care payment. For support of a child not in foster care immediately prior to placement with a subsidy, the subsidy shall be equivalent to the uniform foster care rate.

(b) *Medical.* A medical assistance subsidy shall be sufficient to pay expenses due to a physical, mental or emotional condition of the child which is not covered by a health insurance policy insuring the child or the parent.

(4) PROCEDURE. A written agreement shall be made prior to legal adoption only for children in the guardianship of the department or other agency authorized to place children for adoption. The subsidy may be continued after the child reaches the age of 18 if that child is a full-time high school student.

(5) RULES. The department shall promulgate rules necessary to implement this section.

History: 1977 c. 418.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

48.98 Interstate placement of children. (1)

No person may bring a child into this state or

send a child out of this state for the purpose of placing the child in foster care or for the purpose of adoption without a certificate from the department that the home is suitable for the child.

(2) (a) Any person, except a county agency under s. 48.56 or an agency licensed under s. 48.60, who brings a child into this state for the purpose of placing the child in a foster home shall, before the child's arrival in this state, file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before the child reaches age 18 or is adopted.

(b) By filing the bond required under par. (a), the person filing the bond and the surety submit to the jurisdiction of the court in the county in which the person resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the person who filed the bond and the surety to show cause why judgment on the bond should not be entered for the department. If neither the person nor the surety appears for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the person who filed the bond and the surety.

(d) The department shall periodically bill the person who filed the bond and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond.

(e) The department may waive the bond requirement under par. (a).

(3) The person bringing or sending the child into or out of this state shall report to the department, at least once each year and at any other time required by the department, concerning the location and well-being of the child, until the child is 18 years of age or is adopted.

(4) (a) This section applies only to interstate placements of children which are not governed by s. 48.988.

(b) Section 48.839 governs the placement of children who are not U.S. citizens and not under agency guardianship who are brought

into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may make all rules necessary for the enforcement of this section.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1981 c. 81.

48.981 Abused or neglected children. (1)

DEFINITIONS. In this section:

(a) "Abuse" means any of the following:

1. Physical injury inflicted on a child by other than accidental means.

2. Sexual intercourse or sexual contact under s. 940.225.

3. A violation of s. 940.203.

4. Permitting or requiring a child to violate s. 944.30.

5. Emotional damage.

(b) "Child" means any person under 18 years of age.

(c) "County agency" means a county child welfare agency under s. 48.56 (1) or a community human services board under s. 46.23.

(cm) "Emotional damage" means harm to a child's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which is caused by the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child's parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. "Emotional damage" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(e) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14).

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse will occur under this section.

(h) "Subject" means the child who is the victim or alleged victim of abuse or neglect, the child's parent or any other person specified in a

report or record who is alleged or determined to have abused or neglected the child.

(2) **PERSONS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE OR NEGLECT.** A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, other medical or mental health professional, social or public assistance worker, school teacher, administrator or counselor, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a board established under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, speech therapist, emergency medical technician — advanced (paramedic), ambulance attendant or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with an injury and that abuse of the child will occur shall report as provided in sub. (3). Any other person including an attorney having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with an injury and that abuse of the child will occur may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

(3) **REPORTS; INVESTIGATION.** (a) *Referral of report of suspected child abuse or neglect.* Persons required to report under sub. (2) shall immediately contact, by telephone or personally, the county agency, sheriff or city police department and, in the case of American Indian children, the tribal government and shall inform the agency or department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse will occur. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county agency and, in the case of American Indian children, the tribal government all cases reported to it. The county agency may require that a subsequent report be made in writing. Each county agency shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

(b) *Duties of local law enforcement agencies.*
1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that a child's health or safety is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is

reason to believe that the child's health or safety is in immediate danger and take any necessary action to protect the child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (d) 5 to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

3. If the police or other law enforcement officials determine that criminal action is necessary, they shall refer the case to the district attorney for criminal prosecution.

(c) *Duties of county agencies.* 1. Within 24 hours after receiving a report under sub. (3) (a), the county agency shall, in accordance with the authority granted it under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child is in need of protection or services. The investigation shall include observation of or an interview with the child, or both, and, if possible, a visit to the child's home or usual living quarters and an interview with the child's parents, guardian or legal custodian. At the initial visit to the child's home or living quarters, the person making the investigation shall identify himself or herself and the county agency involved to the child's parents, guardian or legal custodian. The county agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's home or living quarters only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. If the person making the investigation determines that any child in the home requires immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

3. If the county agency determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services, the county agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian refuses to accept the services, the county agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services.

4. The county agency shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or that the child has been threatened with an injury and that abuse of the child is likely to occur. The determina-

tion shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county agency shall give due regard to the culture of the subjects and shall establish that the person alleged to be responsible for the emotional damage is unwilling to remedy the harm. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The county agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child. The county agency shall update the record every 6 months.

6. The county agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child who is the subject of the report.

7. The county agency shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human service agencies to prevent, identify and treat child abuse and neglect. The county agency shall coordinate the development and provision of services to abused and neglected children and to families where abuse or neglect has occurred or to children and families where circumstances justify a belief that abuse will occur.

8. Using the format prescribed by the department, each county agency shall provide the department with information about each report it receives and about each investigation it conducts. This information shall be used by the department to monitor services provided by county agencies. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect, and for planning and policy development.

(d) *Independent investigation.* If an agent or employe of a county agency required to investigate under this subsection is the subject of a report, or if the county agency determines that, because of the relationship between the county agency and the subject of a report, there is a substantial probability that the county agency would not conduct an unbiased investigation, it shall, after taking any action necessary to protect the child, notify the department. Upon

receipt of the notice, the department or an agency designated by it shall conduct an independent investigation. The powers and duties of the department or other agency making an independent investigation are those given to county agencies under sub. (3) (c). In this paragraph, "agent" includes, but is not limited to, a foster parent or other person given custody of the child or a human service professional of a community board established under s. 46.23, 51.42 or 51.437, if the professional is working with the child under contract with or under the supervision of the county agency.

(4) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child.

(5) **CORONER'S REPORT.** Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney, the department, the county agency and, if the institution making the report initially is a hospital, to the hospital.

(6) **PENALTY.** Whoever wilfully violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) **CONFIDENTIALITY.** (a) All reports and records made under this section and maintained by the department, county agencies and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

2. Appropriate staff of the department or a county agency.

3. An attending physician for purposes of diagnosis and treatment.

4. A child's foster parent or other person having custody of the child.

5. A professional employe of a community board established under s. 46.23, 51.42 or

51.437 who is working with the child under contract with or under the supervision of the county agency.

6. A multidisciplinary child abuse and neglect team recognized by the county agency.

7. Another county agency currently investigating a report of suspected child abuse or neglect involving the subject of the record or report.

8. A law enforcement officer or agency for purposes of investigation or prosecution.

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings related to a petition under s. 48.13 or a court conducting dispositional proceedings under subch. VI in which abuse or neglect of the child who is the subject of the report or record is an issue.

11. The county corporation counsel or district attorney representing the interests of the public in proceedings under subd. 10.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county agency or licensed child welfare agency ordered to conduct a screening or an investigation of a step-parent under s. 48.88 (2) (c).

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), a parent who is the subject of a report may authorize the disclosure of a record to any other person. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(d) The department may have access to any report or record maintained by a county agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION (a) The department and county agencies to the extent feasible

shall conduct continuing education and training programs for state and county department staff, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation and coordination among all agencies in the identification, prevention and treatment of child abuse and neglect. The department and county agencies shall develop public information programs about child abuse and neglect.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department or a county agency may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department or county agency shall give priority to parental organizations combating child abuse and neglect.

(9) ANNUAL REPORTS. No later than October 1 of each year the department shall prepare and transmit to the governor and the legislature a report on the status of child abuse and neglect programs. The report shall include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

History: Sup. Ct. Order, 59 W (2d) R3; 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538

See note to 940.201, citing State v. Campbell, 102 W (2d) 243, 306 NW (2d) 272 (Ct. App. 1981).

See note to Art. I, sec. 11, citing State v. Boggess, 115 W (2d) 443, 340 NW (2d) 516 (1983).

Duty to report suspected cases of child abuse or neglect under 48.981 (3) (a) prevails over any inconsistent terms in 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving sixteen- and seventeen-year-old children does not constitute child abuse. 72 Atty. Gen. 93.

See note to Art. I, sec. 3, citing New York v. Ferber, 458 US 747 (1982).

48.982 Child abuse and neglect prevention board. **(1) DEFINITIONS.** In this section:

(a) "Abuse" has the meaning given under s. 48.981 (1) (a).

(b) "Board" means the child abuse and neglect prevention board created under s. 15.195 (4).

(c) "Neglect" means neglect, refusal or inability, for reasons other than poverty, by a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(d) "Organization" means a nonprofit organization, as defined under s. 108.02 (26), or a public agency which provides or proposes to provide child abuse and neglect prevention and intervention services.

(2) POWERS AND DUTIES. The board shall:

(a) One year after July 2, 1983, and biennially thereafter, develop and transmit to the governor and the presiding officer of each house of the legislature a plan for awarding grants to organizations. The plan shall assure that there is an equal opportunity for establishment of child abuse and neglect prevention programs and distribution of grants throughout all geographic areas of the state and in both urban and rural communities.

(b) Develop and publicize criteria for grant applications.

(c) Review and approve or disapprove grant applications and monitor the services provided under each grant awarded under sub. (4).

(d) Solicit and accept contributions, grants, gifts and bequests for the children's trust fund. All moneys received shall be transmitted to the state treasurer for deposit in that fund.

(e) Include as part of its annual report under s. 15.07 (6) the names and locations of organizations receiving grants, the amounts provided as grants, the services provided by grantees and the number of persons served by each grantee.

(f) Establish a procedure for an annual evaluation of its functions, responsibilities and performance. In a year in which the biennial plan under par. (a) is prepared, the evaluation shall be coordinated with the plan.

(g) In coordination with the departments of health and social services and public instruction:

1. Recommend to the governor, the legislature and state agencies changes needed in state programs, statutes, policies, budgets and rules to reduce the problems of child abuse and neglect, improve coordination among state agencies that provide prevention services and improve the condition of children and persons responsible for children who are in need of prevention program services.

2. Promote statewide educational and public informational seminars for the purpose of developing public awareness of the problems of child abuse and neglect.

3. Encourage professional persons and groups to recognize and deal with problems of child abuse and neglect.

4. Disseminate information about the problems of child abuse and neglect to the public and to organizations concerned with those problems.

5. Encourage the development of community child abuse and neglect prevention programs.

(3) STAFF AND SALARIES. The board shall determine the qualifications of and appoint, in the classified service, an executive director and clerical staff. The salaries of the executive director and clerical staff and all actual and necessary operating expenses of the board shall be paid from the appropriation under s. 20.433 (1) (g).

(4) AWARD OF GRANTS. (a) From the appropriations under s. 20.433 (1) (h) and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a). In each of the first 2 fiscal years in which grants are awarded, no organization may receive a grant or grants totaling more than \$15,000.

(b) A grant may be awarded only to an organization that agrees to match the grant, through money or in-kind services, as follows:

1. During the first year of the grant, at least 25% of the amount received for that year.

2. During the 2nd and subsequent years of a grant, at least 50% of the amount received for each year.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b).

(b) Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for programs for the primary prevention of child abuse and neglect, including, but not limited to:

1. Programs to promote public awareness of child abuse and neglect.

2. Community-based programs on education for parenting, prenatal care, perinatal bonding, child development, basic child care, care of children with special needs and coping with family stress.

3. Community-based programs relating to crisis care, early identification of children at risk of child abuse or neglect, and education, training and support groups for parents; children and families.

(e) In determining which organizations shall receive grants, the board shall consider whether the applicant's proposal will further the coordi-

nation of child abuse and neglect services between the organization and other resources, public and private, in the community and the state.

History: 1983 a. 27; 1983 a. 109 s. 6.

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.

48.987 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.

History: 1977 c. 354 s. 94.

48.988 Interstate compact on the placement of children. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

(1) **ARTICLE I - PURPOSE AND POLICY.** It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

(2) **ARTICLE II - DEFINITIONS.** AS used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Sending agency" means a party state, officer or employe thereof; a subdivision of a party state, or officer or employe thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

(3) **ARTICLE III - CONDITIONS FOR PLACEMENT.** (a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this subsection and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.

2. The identity and address or addresses of the parents or legal guardian.

3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to par. (b) may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or addi-

tional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(4) ARTICLE IV - PENALTY FOR ILLEGAL PLACEMENT. The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

(5) ARTICLE V - RETENTION OF JURISDICTION. (a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging

financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in par. (a).

(6) ARTICLE VI - INSTITUTIONAL CARE OF DELINQUENT CHILDREN. A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to being sent to such other party jurisdiction for institutional care and the court finds that:

(a) Equivalent facilities for the child are not available in the sending agency's jurisdiction and

(b) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

(7) ARTICLE VII - COMPACT ADMINISTRATOR. The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

(8) ARTICLE VIII - LIMITATIONS. This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or a guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

(9) ARTICLE IX - ENACTMENT AND WITHDRAWAL. This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of

each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under, this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

(10) ARTICLE X - CONSTRUCTION AND SEVERABILITY. The provisions of this compact shall be liberally construed to effectuate the purposes thereof. 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 party 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 party thereto, 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.

(11) Financial responsibility for any child placed under the interstate compact on the placement of children shall be determined in accordance with sub. (5) in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of ch. 52 or of any other applicable state law fixing responsibility for the support of children also may be invoked.

(12) The "appropriate public authorities" as used in sub. (3) means the department of health and social services, and said department shall receive and act with reference to notices required by sub. (3).

(13) As used in sub. (5) (a), the phrase "appropriate authority in the receiving state" means the state department of health and social services.

(14) The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under sub. (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in the case of the state.

(15) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a

subdivision thereof as contemplated by sub. (5) (b).

(16) Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under sub. (5) and shall retain jurisdiction as provided in sub. (5).

(17) As used in sub. (6), the term "executive head" means the governor.

History: 1977 c. 354, 447; 1981 c. 390; 1983 a. 189.

48.989 Interstate compact on the placement of children: additional procedure. (1) DEFINITIONS. In this section and in s. 48.988:

(a) "Appropriate authority in the receiving state" means the department of health and social services.

(b) "Appropriate public authorities" means the department of health and social services, which shall receive and act with reference to notices required by s. 48.988 (3).

(c) "Executive head" means the governor.

(2) FINANCIAL RESPONSIBILITY. Financial responsibility for any child placed under the provisions of the interstate compact on the placement of children shall be determined in accordance with s. 48.988 (5). In the event of partial or complete default of performance under the compact, the provisions of ch. 52 or of any other applicable state law fixing responsibility for the support of children may also be invoked.

(3) INTERSTATE AGREEMENTS. The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under s. 48.988 (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or any subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in matters involving the state and of the chief local fiscal officer in matters involving a subdivision of the state.

(4) REQUIREMENTS. Any requirement for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed under an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof under s. 48.988 (5) (b).

(5) COURT JURISDICTION. Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under s. 48.988 (5). The court shall retain jurisdiction as provided in s. 48.988 (5).

History: 1977 c. 354, 447; 1981 c. 390

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:

(1) 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 non-delinquent 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.

(2) 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.

(3) ARTICLE III - DEFINITIONS. That, for the purposes of this compact:

(a) "Court" means any court having jurisdiction over delinquent, neglected or dependent children.

(b) "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.

(c) "Probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto.

(d) "Residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

(e) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) 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.

(am) 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 dis-

charged 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 subsection shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this subsection 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.

(5) 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.

(am) 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 subsection. 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 proceed-

ings as may be appropriate under the laws of that state.

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

(6) 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 sub. (4) (a) or (5) (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.

(7) 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 subsection for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

(8) ARTICLE VIII - RESPONSIBILITY FOR COSTS.

(a) That subs. (4) (b), (5) (b) and (7) (d) 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 sub. (4) (b), (5) (b) or (7) (d).

(9) 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.

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

(11) 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.

(12) 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.

(13) 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.

(14) 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 sub. (7) shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under sub. (10) 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.

(15) 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 remain-

ing states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c 390; 1983 a 189.

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) (a) The "appropriate court" of this state to issue a requisition under s. 48.991 (4) is the court assigned to exercise jurisdiction under this chapter for the county of the petitioner's residence, or, if the petitioner is a child welfare agency, the court so assigned for the county where the agency has its principal office, or, if the petitioner is the department, any court so assigned in the state.

(b) The "appropriate court" of this state to receive a requisition under s. 48.991 (4) or (5) is the court assigned to exercise jurisdiction under this chapter for the county where the juvenile is located.

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

History: 1977 c 449; 1981 c 390; 1983 a 189.

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 under s. 48.991 (7) and shall arrange for the supervision of each such probationer or parolee received, either by the department or by a person appointed to perform supervision service for the court assigned to exercise jurisdiction under this chapter for 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 the juveniles.

History: 1977 c. 449; 1981 c. 390.

48.994 Supplementary agreements. The department may enter into supplementary agreements with appropriate officials of other states under s. 48.991 (10). 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.

History: 1981 c. 390

48.995 Financial arrangements. The expense of returning juveniles to this state pursuant to s. 48.991 shall be paid as follows:

(1) In the case of a runaway under s. 48.991 (4), 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 s. 48.991 (5) or (6), if the juvenile is in the legal custody of the department, it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to the juvenile's custody or charged with his or her 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 the person's actual and necessary expenses. In this subsection "appropriate court" means the court which adjudged the juvenile to be delinquent or, if the

juvenile is under supervision for another state under s. 48.991 (7), then the court assigned to exercise jurisdiction under this chapter for the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition under s. 48.991 (6), the person entitled to the juvenile's legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns the juvenile; but if the person is financially unable to pay all the expenses he or she may petition the court assigned to exercise jurisdiction under this chapter for 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 the petitioner is unable to bear any or all of the expense, the court shall arrange for the transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for the person's actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of the expense as the court finds the petitioner is able to pay. If the petitioner fails, without good cause, or refuses to pay that sum, he or she may be proceeded against for contempt.

History: 1977 c. 354, 447, 449; 1981 c. 390

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.