CHAPTER 48

CHILDREN'S CODE

Cross–reference: See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

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 committing delinquent acts the consequences of criminal behavior and to substitute therefor 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 and, in cases of child abuse or neglect, to keep children in their homes when it is consistent with the child's best interest in terms of physical safety and physical health for them to remain at home.

(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. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the wel-

fare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their return to the family.

(gg) To promote the adoption of children into stable families rather than allowing children to remain in the impermanence of foster or treatment foster care.

(gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued and termination of parental rights is in the best interest of the child.

(h) To ensure that victims and witnesses of acts committed by children that result in proceedings under this chapter are, to the extent consistent with the provisions and procedures of this chapter, afforded the same rights as victims and witnesses of crimes under ss. 950.04 and 950.055 and that victims and witnesses are treated with dignity, respect, courtesy and sensitivity throughout those proceedings.

(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; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446.

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.

"Paramount consideration" of child's best interest under (2) does not mandate that the child's interests will always outweigh the public's. In Interest of B.B., 166 W (2d) 202, 479 NW (2d) 205 (Ct. App. 1991).

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.

Cross–reference: See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

48.02 Definitions. In this chapter, unless otherwise defined:

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

(1e) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self–control in the use of alcohol beverages or controlled substances to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1m) "Alcoholism" has the meaning given in s. 51.01 (1m).

(1s) "Approved treatment facility" has the meaning given in s. 51.01 (2)

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

(2d) "Controlled substance" has the meaning given in s. 161.01 (4).

(2g) "County department" means a county department under s. 46.215, 46.22 or 46.23, unless the context requires otherwise.

(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, 48.18 and 48.183, or who has committed a contempt of court, as defined in s. 785.01 (1), as specified in s. 48.355 (6g).

(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).

(5g) "Drug dependent" has the meaning given in s. 51.01 (8).

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

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children unless all of the 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.

(9m) "Habitually truant" means a child who is a habitual truant as defined under s. 118.16 (1) (a).

(9s) "Integrated service plan" has the meaning given in s. 46.56 (1) (g).

(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.

NOTE: Sub. (12) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(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 residual 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.

(15m) "Secured correctional facility" means a correctional institution operated or contracted for by the department for holding in secure custody persons adjudged delinquent. "Secured correctional facility" includes the facility at which the juvenile boot camp program under s. 48.532 is operated.

NOTE: Sub. (15m) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(15m) "Secured correctional facility" means a correctional institution operated or contracted for by the department of health and social services or the department of corrections for holding in secure custody persons adjudged delinquent. "Secured correctional facility" includes the facility at which the juvenile boot camp program under s. 48.532 is operated.

(16) "Secure detention facility" means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for children, licensed by the department under s. 48.66 (1).

NOTE: Sub. (17), as affected by 1993 Wis. Act 375, is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66 (1).

(17m) "Special treatment or care" means professional services which need to be provided to a child or his or her family to protect the well–being of the child, prevent placement of the child outside the home or meet the special needs of the child. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(17q) "Treatment foster home" means any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), that is operated under the supervision of the department, a county department or a licensed child welfare agency, and that provides to no more than 4 children care, maintenance and structured, professional treatment by trained individuals, including the treatment foster parents.

(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; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 W (2d) xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491.

Cross–reference: See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

See note to 767.24, citing In re Marriage of Westrate v. Westrate, 124 W (2d) 244, 369 NW (2d) 165 (Ct. App. 1985).

Deceased parent under (13) continues to be parent; deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F., 168 W (2d) 62, NW (2d) 803 (1992).

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.

NOTE: Sub. (4) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(4) The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the department under s. 48.34 (4m) or (4n) or the supervision of a county department under s. 48.34 (4n).

History: 1977 c. 354; 1993 a. 385.

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 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.

Where children's code provides additional safeguards, those safeguards should be followed. In Re Interest of D.S.P., 166 W (2d) 464, 480 NW (2d) 234 (1992).

SUBCHAPTER II

ORGANIZATION OF COURT

48.03 Time and place of court; absence or disability of judge; court of record. (1) The judge 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; 1989 a. 56.

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 counties. 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 of supervisors determines.

History: 1977 c. 354, 449; 1985 a. 176.

48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties with 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 is appointed as provided in s. 46.21 (1m) (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, 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 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. The chief judge may delegate his or her supervisory functions under s. 48.065 (1).

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 county department 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) 1. All intake workers beginning employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers to satisfy the requirements specified under subd. 1.

3. Each intake worker whose responsibilities include investigation or treatment of child abuse or neglect shall successfully complete additional training in child abuse and neglect protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under subd. 1.

(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. (a) In counties having less than 500,000 population, the county board of supervisors shall authorize the county department or court or both to provide intake services required by s. 48.067 and the staff needed to carry out the objectives and provisions of this chapter under s. 48.069. Intake services shall be provided by employes of the court or county 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. Intake 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.

(b) 1. All intake workers beginning employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this paragraph according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers to satisfy the requirements specified under subd. 1.

(c) Each intake worker whose responsibilities include investigation or treatment of child abuse or neglect shall successfully complete additional training in child abuse and neglect protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under par. (b).

(3) INTAKE SERVICES. The court or county department 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) (o); 1981 c. 93 s. 186; 1981 c. 314, 329; 1983 a. 239; 1985 a. 29, 176; 1987 a. 151, 399; 1991 a. 274.

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. The chief judge may assign law clerks, bailiffs and deputies to the court commissioner. The chief judge shall supervise juvenile court commissioners, law clerks, bailiffs and deputies, except that the chief judge may delegate any of those duties.

(2) Under this chapter a juvenile court commissioner, if authorized to do so by a judge, 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.

(gm) Conduct uncontested proceedings under ss. 48.12 and 48.13.

(gr) Hold hearings, make findings and issue temporary restraining orders in proceedings under s. 813.122 in which the respondent is a child.

(gs) Hold hearings, make findings and issue orders in proceedings under s. 813.125 in which the respondent is a child.

(h) Perform such other duties, not in conflict with this chapter, as the judge 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 and except as provided in sub. (2) (gm).

(c) Make dispositions other than approving consent decrees and other than dispositions in uncontested proceedings under ss. 48.12 and 48.13.

(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 and except in uncontested proceedings under ss. 48.12 and 48.13.

(f) Make any dispositional order under s. 48.34 (4m).

NOTE: Par. (f) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read: (f) Make any dispositional order under s. 48.34 (4g) or (4m).

(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 upon the request of any interested party.

History: 1977 c. 354, 449; 1979 c. 300, 331, 355, 359; 1981 c. 314; 1987 a. 151; 1989 a. 56; 1991 a. 39; 1993 a. 318, 377.

Authority to conduct plea hearings under sub. (2) (d) must be granted by a judge, not the judge assigned to the specific case. In Interest of Joshua M.W. 179 W (2d) 335, 507 NW (2d) 141 (Ct. App. 1993).

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 children 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 the child 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, and if the child meets the criteria under s. 48.208, the intake worker, after consulting by telephone with the law enforcement officer who took the child into custody, may authorize the secure holding of the child while the intake worker is en route to the in–person interview or until 8 a.m. of the morning after the night on which the child was taken into custody.

(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 policies promulgated under s. 48.06 (1) or (2);

(6m) Conduct the multidisciplinary screen in counties that have a pilot program under s. 48.547.

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

(7m) At the request of a minor who claims to be pregnant, assist the minor in preparing a petition to initiate a proceeding under s. 48.375 (7) and file the petition with the clerk of circuit court.

(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; 1987 a. 151, 339; 1991 a. 263; 1993 a. 98.

48.069 Powers and duties of disposition staff. (1) The staff of the department, the court, a county department 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 individual and 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.

(dj) Provide aftercare services for a child who has been released from a secured correctional facility.

NOTE: Par. (dj) is created eff. 7–1–95 by 1993 Wis. Act 385.

(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 department responsible for disposition staff may agree with the court or county department 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; 1985 a. 176; 1989 a. 31, 107; 1993 a. 98, 385.

48.07 Additional sources of court services. If the county board of supervisors 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) DEPARTMENT OF HEALTH AND SOCIAL SERVICES. The court may request the services of the department for cases with special needs that cannot adequately be provided by the county department. The department may furnish the requested services, subject to s. 46.03 (18). The department shall provide, from the appropriation under s. 20.435 (6) (km), the 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) COUNTY DEPARTMENT IN POPULOUS COUNTIES. In counties having a population of 500,000 or more, the director of the county department 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 county department to furnish emergency shelter care services for the child. The emergency shelter care may be provided as specified in s. 48.207.

(4) COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES. Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a child if special treatment or care has been ordered under s. 48.34 (6) and if s. 48.362 (4) applies.

History: 1975 c. 39; 1977 c. 271, 354, 447; 1979 c. 34; 1981 c. 314 s. 146; 1983 a. 27 s. 2202 (20); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446.

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 the person's supervision and shall report thereon as the judge directs.

(2) Except as provided in sub. (3), any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 and 48.069 and any department of corrections staff member designated by agreement between the department of corrections and the department of health and social services has the power of police officers and deputy sheriffs only for the purpose of taking a child into physical custody when 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) (a) In addition to the law enforcement authority specified in sub. (2), department of health and social services personnel designated by that department, personnel of a nonprofit corporation operating a secured correctional facility for girls designated by agreement between that nonprofit corporation and the department of health and social services, and department of corrections personnel designated by agreement between the department of health and social services and the department of corrections have the power of law enforcement authorities to take a child into physical custody under the following conditions:

1. If they are in prompt pursuit of a child who has run away from a secured correctional facility.

2. If the child has failed to return to a secured correctional facility after any authorized absence.

(b) A child taken into custody under par. (a) 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; 1985 a. 320; 1991 a. 39, 316.

Judge may order department to provide information on foster care placements in county. In Interest of J. A. 138 W (2d) 483, 406 NW (2d) 372 (1987).

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 of supervisors, by the corporation counsel, in any matter concerning a civil law violation arising under s. 48.125. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd–numbered year and the board notifies the department of administration of that change by January 1 of that odd–numbered year.

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

(4) By any appropriate person designated by the county board of supervisors 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 of supervisors, by the corporation counsel, in any matter arising under s. 48.13. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd–numbered year and the board notifies the department of administration of that change by January 1 of that odd–numbered year.

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

History: 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 246.

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 cooperate 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, 48.18 and 48.183, 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; 1993 a. 98.

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 s. 48.13 (12), court had jurisdiction under s. 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).

See note to s. 801.04, citing In Interest of H.N.T. 125 W (2d) 242, 371 NW (2d) 395 (Ct. App. 1985).

Because juvenile code is nondiscriminatory and juvenile's offenses occurred off–reservation, state has subject matter jurisdiction under this chapter. In Interest of M.L.S. 157 W (2d) 26, 458 NW (2d) 541 (Ct. App. 1990).

Juvenile court proceedings are commenced under (2) upon the filing of the petition; child does not have to appear in juvenile court before reaching age eighteen for court to retain jurisdiction. In Interest of D.W.B. 158 W (2d) 398, 462 NW (2d) 520 (1990).

Where juvenile turns 18 during pendency of proceedings, filing of waiver petition under s. 48.18 prior to plea hearing is not required for waiver of jurisdiction under (2). In Interest of K.A.P. 159 W (2d) 384, 464 NW (2d) 106 (Ct. App. 1990).

The age of the defendant at the time of charging determines juvenile court jurisdiction regardless of the defendant's age at the time of the offense. State v. Annola, 168 W (2d) 453, 484 NW (2d) 138 (1992).

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 s. 66.054 (25), 1973 stats., [66.054 (22)] and s. 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:

(1) As provided under s. 48.17; and

(2) That the court has exclusive jurisdiction over any child alleged to have violated an ordinance enacted under s. 118.163 only after evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed.

History: 1977 c. 354; 1987 a. 285.

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;

(3m) Who is at substantial risk of becoming the victim of sexual or physical abuse, including injury that is self–inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another child in the home has been the victim of sexual or physical abuse;

(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 treatment or care 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, except as provided under s. 48.17 (2);

(6m) Who is a school dropout, as defined in s. 118.153 (1) (b);

(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;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(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;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent or guardian is unwilling to provide treatment;

(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. 252.04 and not exempted under s. 252.04 (3); or

(14) Who has been determined, under s. 48.30 (5) (c), to be not responsible for a delinquent act by reason of mental disease or defect or who has been determined, under s. 48.30 (5) (d), to be not competent to proceed.

History: 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27, 363, 395, 474.

NOTE: 1993 Wis. Act 395, which created subs. (3m) and (10m), contains extensive explanatory notes.

CHIPS proceeding is controlled by Code of Civil Procedure unless ch. 48 requires different procedure; summary judgment under 802.08 is available in CHIPS cases. In Interest of F.Q. 162 W (2d) 607, 470 NW (2d) 1 (Ct. App. 1991).

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 or drug depen-

dent or suffers from alcoholism, the court may proceed under ch. 51 or 55.

(2) Any voluntary or involuntary admissions, placements or commitments of a 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; 1987 a. 339.

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, 48.428, 48.43, 48.831, 48.832 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.

(9) Proceedings under s. 146.34 (5).

(10) Proceedings under s. 813.122 or 813.125 in which the respondent is a child.

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; 1985 a. 50; 1989 a. 161; 1993 a. 318.

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]

48.16 Jurisdiction over petitions for waiver of parental consent to a minor's abortion. Any circuit court within this state has jurisdiction over a proceeding under s. 48.375 (7) for waiver of the parental consent requirement under s. 48.375 (4).

History: 1991 a. 263.

48.17 Jurisdiction over traffic, boating, snowmobile and all–terrain vehicle violations and over civil law and ordinance violations. (1) TRAFFIC, BOATING, SNOWMOBILE AND ALL–TERRAIN VEHICLE VIOLATIONS. Except for ss. 342.06 (2) and 344.48 (1), and ss. 30.67 (1) and 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 s. 23.33, 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 charged with a traffic, boating, snowmobile or all–terrain vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult before the trial of the proceeding except that the child may be held in secure custody only in a secure detention facility. A child convicted of a traffic, boating, snowmobile or all–terrain vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except as follows:

(a) The court may disregard any minimum period of incarceration specified for the offense.

(b) If the court orders the child to serve a period of incarceration of less than 6 months, the child may serve that period of incarceration only in a secure detention facility.

(c) If the court of civil or criminal jurisdiction orders the child to serve a period of incarceration of 6 months or more, that court shall petition the court assigned to exercise jurisdiction under this chapter to order one or more of the dispositions provided in s. 48.34, including placement of the child in a secured correctional facility under s. 48.34 (4m), if appropriate.

(2) CIVIL LAW AND ORDINANCE VIOLATIONS. (a) 1. 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 12 or older for violations of county, town or other municipal ordinances. If evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed, the municipal court specified in subd. 2. may exercise jurisdiction in proceedings against a child for a violation of an ordinance enacted under s. 118.163 regardless of the child's age and regardless of whether the court assigned to exercise jurisdiction under this chapter has jurisdiction under s. 48.13 (6).

2. a. In this subdivision, "administrative center" means the main administrative offices of a school district.

b. The municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the same municipality as the administrative center of the school district in which the child is enrolled, if that municipality has adopted an ordinance under s. 118.163.

c. If the municipality specified under subd. 2. b. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the school in which the child is enrolled is located, if that municipality has adopted an ordinance under s. 118.163.

d. If the municipality specified under subd. 2. c. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the child resides, if that municipality has adopted an ordinance under s. 118.163.

3. When a child is alleged to have violated a municipal ordinance, the child may be:

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

b. 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

c. 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 12 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 notify the child's parent or guardian within 7 days. The agency issuing a citation to a child who is 12 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 161.573 (2), 161.574 (2) or 161.575 (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 enacted under s. 118.163 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 161.573 (2), 161.574 (2) or 161.575 (2), the court shall enter any of the dispositional orders permitted under s. 48.343 (1), (2), (4), (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 or privilege under this section, the court shall immediately take possession of the applicable license and forward it to the department that 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 period of suspension, the court shall immediately notify the department, which shall thereupon return the license to the person.

(e) If a municipal court finds that a child violated a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 161.573 (2), 161.574 (2) or 161.575 (2), the court shall enter a dispositional order under s. 48.344.

(f) If the act the child committed resulted in personal injury or damage to or loss of the property of another, the municipal court shall, to the extent possible, provide each known victim of the act with the information contained in the notice required under s. 48.346.

(g) If a municipal court finds that a child violated a municipal ordinance enacted under s. 118.163, it shall enter a dispositional order under s. 48.342 that is consistent with the municipal ordinance.

(3) SAFETY AT SPORTING EVENTS. Notwithstanding sub. (2), courts of criminal or civil jurisdiction have exclusive jurisdiction in proceedings against children under s. 167.32 or under a local ordinance strictly conforming to s. 167.32. A child convicted of a violation under s. 167.32 or under a local ordinance strictly conforming to s. 167.32 shall be treated as an adult for sentencing purposes.

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; 1985 a. 254; 1987 a. 27, 285; 1989 a. 31, 121, 145; 1991 a. 39, 40, 189, 319; 1993 a. 98, 149.

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).

Exclusive grant of jurisdiction to circuit courts for enumerated traffic offenses under this section involving juvenile offenders, sixteen years of age or older, includes authority to sentence juveniles to adult section of county jail where penalty is prescribed by substantive traffic statute. 79 Atty. Gen. 94.

48.18 Jurisdiction for criminal proceedings for children 14 or older; waiver hearing. (1) (a) Subject to s. 48.183, a child or district attorney may apply to the court to waive its jurisdiction under this chapter in any of the following situations:

1. If the child is alleged to have attempted to violate s. 940.01 on or after the child's 14th birthday or is alleged to have violated s. 161.41 (1), 940.01, 940.02, 940.05, 940.06, 940.225 (1), 940.305, 940.31 or 943.10 (2) on or after the child's 14th birthday.

2. If the child is alleged to have committed, on or after the child's 14th birthday, a violation, at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would constitute a felony under ch. 161 or under chs. 939 to 948 if committed by an adult.

3. If the child is alleged to have violated any state criminal law on or after the child's 16th birthday.

(b) The judge may also initiate a petition for waiver in any of the situations described in par. (a) 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.

(2m) If it appears that the child may be suitable for participation in the youthful offender program under s. 48.537 or the adult intensive sanctions program under s. 301.048, the judge shall order the department of corrections to submit a written report analyzing the child's suitability for participation in those programs and recommending whether the child should be placed in either of those programs.

NOTE: Sub. (2m) is created eff. 12–1–95 by 1993 Wis. Act 377.

(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 court has previously waived its jurisdiction over the child, whether the child has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or 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.

NOTE: Par. (c) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(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 and the suitability of the child for placement in the youthful offender program under s. 48.537 or the adult intensive sanctions program under s. 301.048.

(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. In the absence of evidence to the contrary, the judge shall presume that it would be contrary to the best interests of the child and of the public to hear the case if the child is alleged to have violated any state criminal law on or after the child's 16th birthday and if the court has waived its jurisdiction over the child for a previous violation.

(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.

(9) If waiver is granted, sub. (1) does not restrict the authority of the district attorney to charge the offense he or she deems is appropriate and does not restrict the authority of any court or jury to convict the child in regard to any offense.

History: 1977 c. 354, 449; 1979 c. 300; 1987 a. 27; 1993 a. 98, 244, 377.

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. Theriault 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).

Involuntary confession, if reliable and trustworthy, may be used to determine prosecutive merit; it would not be admissible at trial. If juvenile does not meet burden of showing unreliability of confession, no evidentiary hearing is required. In Interest of J.G. 119 W (2d) 748, 350 NW (2d) 668 (1984).

In certain contested cases, state may establish prosecutive merit on basis of reliable information provided in delinquency and waiver petitions alone. In Interest of P.A.K. 119 W (2d) 871, 350 NW (2d) 677 (1984).

Trial court did not abuse discretion in declining to convene in camera proceedings to determine whether state had complied with discovery orders. In Interest of G.B.K. 126 W (2d) 253, 376 NW (2d) 385 (Ct. App. 1985).

Waiver petition under (2) which referred only to facts of underlying charge and not to facts to be presented under (5) was insufficient. In Interest of J.V.R. 127 W (2d) 192, 378 NW (2d) 266 (1985).

Court may consider waiver investigation report containing information not included in waiver petition. In Interest of S. N. 139 W (2d) 270, 407 NW (2d) 562 (Ct. App. 1987).

Juvenile court improperly denied waiver based on belief that adult court would improperly sentence juvenile. In Interest of C. W. 142 W (2d) 763, 419 NW (2d) 327 (Ct. App. 1987).

If state shows that delay in charging offense committed by adult defendant while still a juvenile was not with manipulative intent, due process does not require dismissal. State v. Montgomery, 148 W (2d) 593, 436 NW (2d) 303 (1989).

Sub. (9) permits prosecution to charge offense related to homicide after waiver under (1) is completed. State v. Karow, 154 W (2d) 375, 453 NW (2d) 181 (Ct. App. 1990).

By pleading guilty to criminal charges, defendant waives right to challenge waiver proceeding. State v. Kraemer, 156 W (2d) 761, 457 NW (2d) 562 (Ct. App. 1990).

See note to 48.12 citing Interest of K.A.P. 159 W (2d) 384, 464 NW (2d) 106 (Ct. App. 1990).

See note to 48.01 citing In Interest of B.B.,166 W (2d) 202, 479 W (2d) 205 (Ct. App. 1991).

Delinquency and waiver petitions must both be filed to bring about a waiver hearing; trial court may not proceed with waiver hearing where time limits under s. 48.25 for delinquency petition are not complied with. In Interest of Michael J. L. 174 W (2d) 131, 496 NW (2d) 758 (Ct. App. 1993), 98.

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.

48.183 Jurisdiction over children alleged to have committed assault or battery in a secured correctional facility. Notwithstanding ss. 48.12 (1) and 48.18, courts of criminal jurisdiction have exclusive original jurisdiction over a child who is alleged to have violated s. 940.20 (1) or 946.43 while placed in a secured correctional facility. Notwithstanding subchs. IV to VI, a child who is alleged to have violated s. 940.20 (1) or 946.43 while placed in a secured correctional facility is subject to the procedures specified in chs. 967 to 979 and the criminal penalties provided for those crimes, unless a court of criminal jurisdiction transfers jurisdiction under s. 970.032 to a court assigned to exercise jurisdiction under this chapter.

History: 1993 a. 98.

48.185 Venue. (1) Subject to sub. (3), venue for any proceeding under ss. 48.12, 48.125, 48.13, 48.135, 48.14 (1) to (9) 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). Venue for a proceeding under s. 48.14 (10) is as provided in s. 801.50 (5s).

(2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363 or 48.365, or any other proceeding 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.

(3) Venue for a proceeding under s. 48.12 or 48.13 (12) based on an alleged violation of s. 175.45 (6) may be in the child's county of residence at the time that the petition is filed or, if the child does not have a county of residence in this state at the time that the petition is filed, any county in which the child has resided while subject to s. 175.45.

History: 1977 c. 354; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491.

This section does not authorize change of venue, upon motion of party or upon stipulation of parties, after adjudication but before first dispositional hearing. 75 Atty. Gen. 100.

SUBCHAPTER IV

HOLDING A CHILD IN CUSTODY

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

(a) A warrant.

(b) A capias issued by a judge under 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.

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

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 or a county department or of corrective sanctions supervision administered by the department.

NOTE: Subd. 6. is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

6. The child has violated the terms of court–ordered supervision or aftercare supervision administered by the department of health and social services or a county department, corrective sanctions supervision administered by the department of health and social services or youthful offender supervision administered by the department of corrections.

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.

8. The child has violated a civil law or a local ordinance punishable by a forfeiture, except that in that case the child shall be released immediately under s. 48.20 (2) (ag) or as soon as reasonably possible under s. 48.20 (2) (b) to (e).

9. The child is a resident of a 1st class city and is absent from school without an acceptable excuse under s. 118.15. This subdivision does not apply after June 30, 1994.

10. The child is absent from school without an acceptable excuse under s. 118.15. This subdivision applies beginning on July 1, 1994.

(1m) A child who is absent from school without an acceptable excuse under s. 118.15 may be taken into custody by an individual designated under s. 118.16 (2m) (a) if the school attendance officer of the school district in which the child resides or the child's parent, guardian or legal custodian requests that the child be taken into custody. The request shall specifically identify the child.

(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; 1985 a. 176; 1989 a. 31, 56, 107; 1993 a. 16, 56, 377, 490.

Juvenile may not be taken into custody under (1) (d) 7 for violating ordinance which does not impose a forfeiture although forfeiture may be imposed under 48.343 (2). In Interest of J.F.F. 164 W (2d) 10, 473 NW (2d) 546 (Ct. App. 1991).

48.20 Release or delivery from custody. (2) (ag) Except as provided in pars. (b) to (g), a person taking a child into custody shall make every effort to release the child immediately to the child's parent, guardian or legal custodian.

(b) If the child's parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, the person who took the child into custody may release the child to a responsible adult after counseling or warning the child as may be appropriate.

(c) If the child is 15 years of age or older, the person who took the child into custody may release the child without immediate adult supervision after counseling or warning the child as may be appropriate.

(cm) If the child has violated the terms of aftercare supervision administered by the department or a county department, the person who took the child into custody may release the child to the department or county department, whichever has aftercare supervision over the child.

NOTE: Par. (cm) is created eff. 7–1–95 by 1993 Wis. Act 385.

(d) If the child is a runaway, the person who took the child into custody may release the child to a home authorized under s. 48.227.

(e) If a child is taken into custody under s. 48.19 (1) (d) 9. or 10., the law enforcement officer who took the child into custody may release the child under par. (ag) or (b) or, if the school board of the school district in which the child resides has established a youth service center under s. 118.16 (4) (e), may deliver that child to that youth service center. If the child is delivered to a youth service center, personnel of the youth service center may release the child to the child's parent, guardian or legal custodian, or release the child to the child's school, after counseling the child as may be appropriate. If the child is released to the child's school, personnel of the youth service center shall immediately notify the child's parent, guardian and legal custodian that the child was taken into custody under s. 48.19 (1) (d) 9. or 10. and released to the child's school.

(f) If a child is taken into custody under s. 48.19 (1m), the person who took the child into custody may release the child under par. (ag), (b) or (e) or to the child's school administrator, as defined in s. 125.09 (2) (a) 3., or a school employe designated by the school administrator. If a child is released to a school administrator or the school administrator's designee under this paragraph, the school administrator or designee shall do all of the following:

1. Immediately notify the child's parent, guardian or legal custodian that the child was taken into custody under s. 48.19 (1m) and released to the school administrator or his or her designee.

2. Make a determination of whether the child is a child at risk, as defined in s. 118.153 (1) (a), unless that determination has been made within the current school semester. If a child is determined to be a child at risk under this subdivision, the school administrator shall provide a program for the child according to the plan developed under s. 118.153 (2) (a).

3. Provide the child and his or her parent or guardian with an opportunity for educational counseling to determine whether a change in the child's program or curriculum, including any of the modifications specified in s. 118.15 (1) (d), would resolve the child's truancy problem, unless the child and his or her parent or guardian have been provided with an opportunity for educational counseling within the current school semester.

(g) If a child is taken into custody under s. 48.19 (1) (d) 9. or 10. and is not released under par. (ag), (b) or (e) or if a child is taken into custody under s. 48.19 (1m) and is not released under par. (ag), (b), (e) or (f), the person who took the child into custody shall release the child without immediate adult supervision after counseling or warning the child as may be appropriate.

(3) If the child is released under sub. (2) (b) to (d) or (g), 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 as provided in par. (c). The intake worker shall base his or her decision as to whether to release the child or to continue to hold the child in custody on the criteria specified in s. 48.205 and criteria established 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

1m. In the case of a child who has violated the terms of aftercare supervision administered by the department or a county department, to the department or county department, whichever has aftercare supervision of the child.

NOTE: Subd. 1m. is created eff. 7–1–95 by 1993 Wis. Act 385.

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) 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. When the child is alleged to be in need of protection or services and is 12 years of age or older, or is alleged to have committed a delinquent act, 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.

NOTE: Sub. (8) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(8) 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. If a child who has violated the terms of aftercare supervision administered by the department or a county department is held in custody, the intake worker shall also notify the department or county department, whichever has supervision over the child, of the reasons for holding the child in custody, of the child's whereabouts and of the time and place of the detention hearing required under s. 48.21. 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. When the child is alleged to be in need of protection or services and is 12 years of age or older, or is alleged to have committed a delinquent act, 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); 1993 a. 16, 56, 98, 385.

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 believe 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;

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21 (4) that if another child in the home is not held that child will 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

(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21 (4) that another child in the home meets those criteria.

(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 division of hearings and appeals in the department of administration for revocation of aftercare or corrective sanctions supervision.

NOTE: Par. (c) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(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 division of hearings and appeals in the department of administration for revocation of aftercare, corrective sanctions or youthful offender 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; 1989 a. 31, 107; 1993 a. 16, 377, 395.

NOTE: 1993 Wis. Act 395, which creates subs. (1) (am) and (bm), contains extensive explanatory notes.

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 or a licensed treatment 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 or treatment 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 (2) 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, treatment 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); 1985 a. 332; 1993 a. 446.

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 hearing or a revocation hearing for children on aftercare or corrective sanctions supervision. For children on aftercare or corrective sanctions supervision, the delinquent act referred to in this section may be the act for which the child was committed to a secured correctional facility.

NOTE: Sub. (1) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(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 hearing or a revocation hearing for children on aftercare or corrective sanctions supervision. For children on aftercare or corrective sanctions supervision, the delinquent act referred to in this section may be the act for which the child was placed in a secured correctional facility.

NOTE: Sub. (1), as affected by 1993 Wis. Act 385, is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(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 hearing or a revocation hearing for children on aftercare, corrective sanctions or youthful offender supervision. For children on aftercare, corrective sanctions or youthful offender supervision, the delinquent act referred to in this section may be the act for which the child was placed in 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; 1985 a. 176; 1993 a. 16, 377, 385, 491.

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 of corrections or a county which is available and:

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

(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 who has been waived to adult court under s. 48.18 or who is under the jurisdiction of an adult court under s. 48.183.

History: 1977 c. 354; 1989 a. 31; 1993 a. 98.

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.

(3m) PARENTAL NOTICE REQUIRED. If the child has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the child's parents of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children. If the court is unable to provide the notice before commencement of the hearing, it shall provide the child's parents with the specified information in writing as soon as possible after the hearing.

(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.

(4m) ELECTRONIC MONITORING. The judge or juvenile court commissioner may include in an order under sub. (4) (a) or (b) a condition that the child be monitored by an electronic monitoring system.

(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; 1985 a. 311; 1993 a. 98.

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

When party waives custody hearing pursuant to (3) (a), trial court need not enter written custody order or inform parties of rights; department need not file petition within 24 hours pursuant to (1) (b). In Interest of G.H. 150 W (2d) 407, 441 NW (2d) 227 (1989).

48.215 Mother–young child care program. Sections 48.19 to 48.21 do not apply to children participating in the mother–young child care program under s. 301.049.

History: 1991 a. 39.

48.22 Establishment of secure detention facilities and shelter care facilities. (1) (a) The county board of supervisors may establish a secure detention facility or a shelter care facility or both or the county boards of supervisors for 2 or more counties may jointly establish a secure detention facility or a shelter care facility or both in accordance with ss. 46.16, 46.20 and 301.36.

(b) Subject to sub. (3) (ar), 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) Counties shall submit plans for the secure detention facility or juvenile portion of the county jail to the department of corrections and submit plans for the shelter care facility to the department of health and social services. The applicable department shall review the submitted plans. The counties may not implement any such plan unless the applicable department has approved the plan. After consultation with the department of health and social services, the department of corrections shall promulgate 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 of corrections 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.

NOTE: Par. (b) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(b) If the department of corrections approves, a secure detention facility or a holdover room may be a part of a public building in which there is a jail or other facility for the detention of adults if the secure detention facility or holdover room is so physically segregated from the jail or other facility that the secure detention facility or holdover room may be entered without passing through areas where adults are confined and that children detained in the secure detention facility or holdover room 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.

NOTE: Par. (c) is amended eff. 12–1–95 by 1993 Wis. Acts 377 and 491 to read:

(c) A shelter care facility shall be used for the temporary care of children. A shelter care facility, other than a holdover room, may not be in the same building as a facility for the detention of adults.

(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 par. (am) and to civil service regulations in counties having civil service.

(am) If a secure detention facility is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults may nominate persons to be considered under par. (a) for the position of superintendent of the secure detention facility. Nominees under this paragraph shall have demonstrated administrative abilities and a demonstrated interest in the problems of juvenile justice and the welfare of children.

NOTE: Par. (am) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(am) If a secure detention facility or holdover room is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults may nominate persons to be considered under par. (a) for the position of superintendent of the secure detention facility or holdover room. Nominees under this paragraph shall have demonstrated administrative abilities and a demonstrated interest in the problems of juvenile justice and the welfare of children.

(ar) Notwithstanding sub. (1) (b), if a secure detention facility is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults shall determine the policies of that secure detention facility relating to security and emergency response and shall determine the procedures for implementing those policies.

NOTE: Par. (ar) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(ar) Notwithstanding sub. (1) (b), if a secure detention facility or holdover room is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults shall determine the policies of that secure detention facility or holdover room relating to security and emergency response and shall determine the procedures for implementing those policies.

(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.

(c) All superintendents appointed under par. (a) or (b) after May 1, 1992, shall, within one year after that appointment, successfully complete an administrative training program approved of or provided by the department of justice.

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

(7) No person may establish a shelter care facility without first obtaining a license under s. 48.66 (1).

History: 1977 c. 29, 194; 1977 c. 354 ss. 39, 52; 1977 c. 418 ss. 305, 305m, 928 (55) (c); 1977 c. 447, 449; Stats. 1977 s. 48.22; 1979 c. 34 s. 2102 (20) (a); 1979 c. 300; 1981 c. 20, 329; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31, 107; 1991 a. 269, 319; 1993 a. 375, 377, 491.

Privately operated secure detention facilities are not authorized. 73 Atty. Gen. 115.

48.225 Statewide plan for secure detention facilities. The department shall assist counties in establishing secure detention facilities under s. 48.22 by developing and promulgating a statewide plan for the establishment and maintenance of suitable secure detention facilities reasonably accessible to each court.

History: 1977 c. 354 s. 54; 1977 c. 447 s. 210; Stats. 1977 s. 48.225; 1989 a. 31, 107.

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 department, 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 conferring 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; 1985 a. 176.

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 if the court is satisfied that the 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 department for placement in a secured correctional facility or transfer jurisdiction over the child to adult court.

NOTE: Par. (a) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(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 if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not place the child in a secured correctional facility or transfer jurisdiction over the child to adult court.

NOTE: Par. (a), as affected by 1993 Wis. Act 385, is amended eff. 12–1–95 by 1993 Wis. Acts 377 and 491 to read:

(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 if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not place the child in a secured correctional facility, transfer legal custody of the child to the department of corrections for participation in the youthful offender program or transfer jurisdiction over the child to adult court.

(am) A child subject to a sanction under s. 48.355 (6) (d) shall be entitled to representation by counsel at the hearing under s. 48.355 (6) (c).

(ar) A child subject to proceedings under s. 48.357 (3) or (5) shall be afforded legal representation as provided in those subsections.

NOTE: Par. (ar) is created eff. 7–1–95 by 1993 Wis. Act 385.

(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 under s. 48.14 (5) shall be represented by counsel. No waiver of counsel may be accepted by the court.

(cm) Any minor who is subject to the jurisdiction of the circuit court under s. 48.16 and who is required to appear in court shall be represented by counsel.

(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.

(2m) RIGHT TO COUNSEL; EXTENDED COURT JURISDICTION. A person subject to s. 48.366 shall be represented by counsel at all proceedings under that section, except that the person may waive the right to counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver.

(3) POWER OF THE COURT TO APPOINT COUNSEL. At any time, upon request or on its own motion, the court 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), (3m), (10), (10m) 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 person has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly and voluntarily waived, the court shall refer the person to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a person who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral. Any counsel appointed in a

petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child. In any situation under sub. (2) in which a parent 18 years of age or older 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). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel 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; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 W (2d) xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491.

Cross-reference: See s. 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).

When party to CHIPS action is represented both by adversary counsel and GAL, adversary counsel must be allowed to zealously represent client's expressed wishes even where GAL holds opposing view. In Interest of T.L. 151 W (2d) 725, 445 NW (2d) 729 (Ct. App. 1989).

Right to be represented by counsel includes right to effective counsel. In Interest of M.D.(S), 168 W (2d) 996, 485 NW (2d) 52 (1992).

48.235 Guardian ad litem. (1) APPOINTMENT. (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.

(b) The court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of parental rights.

(c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, and for a child who is the subject of a contested adoption proceeding.

(d) The circuit court may appoint a guardian ad litem for a minor in a proceeding under s. 48.375 (7) to aid the circuit court in determining under s. 48.375 (7) (c) whether or not the minor is mature and well–informed enough to make the abortion decision on her own and whether or not the performance or inducement of the abortion is in the minor's best interests.

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. 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.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the person for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of such person or the positions of others as to the best interests of such person. If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of such person, the guardian ad litem shall so inform the court and the court may appoint counsel to represent that person. The guardian ad litem has none of the rights or duties of a general guardian.

(4) MATTERS INVOLVING CHILD IN NEED OF PROTECTION OR SERVICES. (a) In any matter involving a child found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.38 and 48.43 (5).

2. Petition for a change in placement under s. 48.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14.

4. Petition for revision of dispositional orders under s. 48.363.

5. Petition for extension of dispositional orders under s. 48.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125.

7. Petition for relief from a judgment terminating parental rights under s. 48.46.

8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.355 (2) (b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

(5) MATTERS INVOLVING MINOR PARENT. The guardian ad litem for a minor parent whose parental rights are the subject of a voluntary termination proceeding shall interview the minor parent, investigate the reason for the termination of parental rights, assess the voluntariness of the consent and inform the minor parent of his or her rights and of the alternatives to, and the effect of, termination of parental rights.

(6) COMMUNICATION TO A JURY. In jury trials under this chapter, the guardian ad litem or the court may tell the jury that the guardian ad litem represents the interests of the person for whom the guardian ad litem was appointed.

(7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing or on the record that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the entry of the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

(8) COMPENSATION. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, except that compensation shall be paid by the proposed adoptive parents in uncontested termination proceedings and uncontested adoption cases under ss. 48.835 and 48.837 and by the agency in uncontested termination proceedings and uncontested adoptions under s. 48.833. If the proposed adoptive parents are unable to pay, the court may direct that the county of venue pay the compensation, in whole or in part, and may direct that the proposed adoptive parents reimburse the county, in whole or in part, for the payment. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to pri-

vate attorneys under s. 977.08 (4m). At any time before the final order for adoption, the court may order that payments be placed in an escrow account in an amount estimated to be sufficient to pay the compensation of the guardian ad litem.

History: Sup. Ct. Order, 151 W (2d) xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395.

Judicial Council Note, 1990: This section is designed to clarify when a guardian ad litem may or shall be appointed under this chapter; to define the duties of the guardian ad litem; and to require the adoptive parents to pay guardian ad litem fees in independent adoptions and the agency to do so in adoptions pursuant to s. 48.837.

Sub. (1) indicates when a guardian ad litem is to be appointed, leaving broad discretion to the court for such appointments.

Sub. (1) (b) and (c) set forth situations in which a guardian ad litem is required. While there are situations in which adversary counsel are an alternative to a guardian ad litem or more desirable and therefore required under s. 48.23, the committee concluded that the best interests of the child must be reflected by a guardian ad litem in the situations enumerated in these paragraphs.

Sub. (2) continues the qualifications currently in s. 48.235.

Sub. (3) addresses the responsibilities of the guardian ad litem. The guardian ad litem is to be an advocate for the best interests of the person for whom the appointment is made. The definition specifically rejects the view that the guardian ad litem should represent the wishes of the subject when they are different from interests. The guardian ad litem is required to inform the court when the wishes of the person differ from what the guardian ad litem believes to be his or her best interests. The definition also stresses the fact that the guardian ad litem should be independent and function in the same manner as the lawyer for a party. This includes the responsibility to serve appropriate documents, to advocate in accordance with the rules of evidence, to avoid ex parte communication, and the like.

Sub. (4) is designed to suggest the possible duties of a guardian ad litem after a CHIPS order. Continuation of the guardian ad litem is discretionary with the court in such situations, as provided in sub. (7). Sub. (4) specifically permits the continued involvement of the guardian ad litem in permanency planning and in the monitoring of the placement. It also makes it clear that, if it is in the best interests of the child, the guardian ad litem may seek the termination of the parental rights of the parents of the child and prosecute such an action. It is not intended to limit the responsibilities to those noted. The court may require the department to give appropriate notice to the guardian ad litem so the duties can be fulfilled.

Sub. (5) clarifies the responsibilities of the guardian ad litem for minor parents in termination cases, in the way of investigation and communication.

Sub. (6) permits the guardian ad litem or court to explain to the jury that he or she represents the interests of the person. This is to avoid unnecessary confusion.

Sub. (7) provides for the termination of appointment of the guardian ad litem upon entry of the court's final order unless the court extends or reappoints, indicating the scope of continuing responsibility. There are a large number of things a guardian ad litem might do during the period of extension or reappointment, including participate in permanency planning, seek extension or revision of dispositional orders, seek a change in placement and the like. The court might well identify general concerns to which the guardian ad litem should continue to be attentive, leaving to the guardian ad litem the methods to carry out the delegation of responsibility. This subsection also provides for the involvement of the guardian ad litem in appeals, leaving to the guardian ad litem broad discretion as to whether and how to participate. The requirement that the guardian ad litem notify the appellate court if the guardian ad litem chooses not to participate is to ensure that the guardian ad litem reflects on this important decision. The appellate court may require participation, notwithstanding the guardian ad litem's decision.

Sub. (8) retains the current law that, unless the court otherwise orders, the county pays the fees of the guardian ad litem in matters under this chapter, but it creates an exception for uncontested termination proceedings and uncontested adoptions, in which cases the adoptive parents or the agency are required to pay this fee unless the court finds they are unable to do so. The court is given the authority to require advance payment of the guardian ad litem fees into an escrow account. [Re Order effective Jan. 1, 1990]

See note to 48.23, citing In Interest of T.L., 151 W (2d) 725, 445 NW (2d) 729 (Ct. App. 1989).

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.

(2) The procedures for issuance and filing of a citation, and for forfeitures, stipulations and deposits 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, penalty assessments and jail assessments, and a capias shall be substituted for an arrest warrant. Sections 66.119 (3) (c) and (d), 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 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; 1987 a. 27; 1989 a. 56; 1991 a. 128.
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.

(1m) As part of the intake inquiry, the intake worker shall inform the child and the child's parent, guardian and legal custodian that they may request counseling from a person designated by the court to provide dispositional services under s. 48.069.

(2) (a) As part of the intake inquiry the intake worker may conduct multidisciplinary screens and intake conferences with notice to the child, parent, guardian and legal custodian. If sub. (2m) applies, the intake worker shall conduct a multidisciplinary screen under s. 48.547 if the child has not refused to participate under par. (b).

(b) No child or other person may be compelled to appear at any conference, participate in a multidisciplinary screen, produce any papers or visit any place by an intake worker.

(2m) (a) In counties that have a pilot program under s. 48.547, a multidisciplinary screen shall be conducted for:

1. Any child alleged to have committed a violation specified under ch. 161.

2. Any child alleged to be delinquent or in need of protection and services who has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b) or 125.09 (2) or a local ordinance that strictly conforms to any of those sections.

3. Any child alleged to have committed any offense which appears to the intake worker to be directly motivated by the child's need to purchase or otherwise obtain alcohol beverages or controlled substances.

4. Any child 12 years of age or older who requests and consents to a multidisciplinary screen.

5. Any child who consents to a multidisciplinary screen requested by his or her parents.

(b) The multidisciplinary screen may be conducted by an intake worker for any reason other than those specified in the criteria under par. (a).

(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; 1987 a. 339; 1989 a. 31, 56; 1993 a. 98.

Under facts of case, (5) didn't mandate dismissal although referral wasn't made within 40 days. In re J. L. W., 143 W (2d) 126, 420 NW (2d) 398 (Ct. App. 1988).

Under (1), "information indicating that a child should be referred to the court as delinquent" is that quantum of information that would allow a reasonable intake worker to evaluate the appropriate disposition of the matter. In Interest of J.W.T., 159 W (2d) 754, 465 NW (2d) 520 (Ct. App. 1990).

Sub. (5), when read in conjuction with sub. (3), requires that an intake worker request the district attorney to file a delinquency petition and does not require the intake worker to make a recommendation that a petition be filed. Interest of Antonio M.C. 182 W (2d) 301, 513 NW (2d) 662 (Ct. App. 1994).

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 ss. 48.17, 48.18 and 48.366 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.

(1m) If the child who is the subject of the intake inquiry is alleged to have committed an act which resulted in personal injury or damage to or loss of the property of another, the intake worker shall inform the child's parents in writing of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children.

(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; 1985 a. 311; 1987 a. 27.

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) (a) Informal disposition may provide for any one or more of the following:

1. That the child appear with a parent, guardian or legal custodian for counseling and advice.

2. 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.

3. That the child submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility for an examination of the child's use of alcohol beverages or controlled substances and any medical, personal, family or social effects caused by its use, if the multidisciplinary screen conducted under s. 48.24 (2) shows that the child is at risk of having needs and problems related to the use of alcohol beverages or controlled substances and its medical, personal, family or social effects.

4. That the child participate in an alcohol and other drug abuse outpatient treatment program or an education program relating to the abuse of alcohol beverages or controlled substances, if an alcohol and other drug abuse assessment conducted under subd. 3. recommends outpatient treatment or education.

5. a. That the child participate in a restitution project if the child has attained the age of 12 and the act for which the informal disposition is being imposed has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering. Subject to subd. 5. c., the informal disposition may require the child to repair damage to property or to make reasonable restitution for the damage or injury if the intake worker, after taking into consideration the well–being and needs of the victim, considers it beneficial to the well–being and behavior of the child. Any such informal disposition shall include a determination that the child alone is financially able to pay and may allow up to the date of the expiration of the disposition for the payment.

b. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a child who is 12 or 13 years of age who is participating in a restitution project provided by the county may, for the purpose of making restitution, be employed or perform any duties under any circumstances in

which a child 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103.

c. Under this subdivision, an informal disposition may not require a child who is 12 or 13 years of age to make more than $250 in restitution.

6. a. That the child participate in a supervised work program if the child has attained the age of 12 and the county has a supervised work program in accordance with s. 48.34 (9) (a). 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 the staff of the county department or community agency or other qualified person. The program may not conflict with the child's regular attendance at school. Subject to subd. 6. c., the amount of work required shall be reasonably related to the seriousness of the child's offense.

b. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a child who is 12 or 13 years of age who is participating in a community service project provided by the county may, for purposes of performing community service work ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103.

c. Under this subdivision, an informal disposition may not require a child who is 12 or 13 years of age to perform more than 40 total hours of community service work.

7. That the child be placed with a volunteers in probation program under such conditions as the intake worker determines are reasonable and appropriate, if the child is alleged to have committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the child's county of residence and if the intake worker determines that volunteer supervision under that volunteers in probation program will likely benefit the child and the community. The conditions that the intake worker may establish under this subdivision may include, but need not be limited to, a request to a volunteer to provide for the child a role model, informal counseling, general monitoring and monitoring of the conditions established by the intake worker, or any combination of these functions, and any other informal disposition that the intake worker may establish under this paragraph.

(b) Informal disposition may not include any form of residential placement and may not exceed 6 months, except as provided under sub. (2m).

(c) If the informal disposition provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the child and the child's parent, guardian or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into an informal disposition agreement for the provision of alcohol and other drug abuse outpatient treatment.

(2m) If the informal disposition is based on allegations that the child is habitually truant and that the child is in need of protection or services, the informal disposition may not exceed one year.

(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 terminate the informal disposition at any time or object at any time to the fact or terms of the informal disposition. If an 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. If the informal disposition is terminated the intake worker may 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; 1985 a. 311; 1987 a. 27, 285, 339, 403; 1991 a. 213, 253, 315; 1993 a. 98.

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.

(6) If a proceeding is brought under s. 48.13, any party to or any governmental or social agency involved in the proceeding may petition the court to issue a temporary restraining order and injunction as provided in s. 813.122 or 813.125. The court exercising jurisdiction under this chapter shall follow the procedure under s. 813.122 or 813.125 except that the court may combine hearings authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary restraining order and injunction is not subject to the limitations under s. 813.122 (2) or 813.125 (2) and no fee is required regarding the filing of the petition under s. 813.122 or 813.125.

History: 1977 c. 354; 447; 1979 c. 300, 331, 355, 359; 1985 a. 234; 1993 a. 318.

"Good cause" under (2) (a) defined. In Interest of F. E. W., 143 W (2d) 856, 422 NW (2d) 893 (Ct. App. 1988).

Where state fails to comply with mandatory filing procedures pursuant to (2) (a), petition must be dismissed with prejudice. In Interest of C.A.K., 154 W (2d) 612, 453 NW (2d) 897 (1990).

Delinquency and waiver petitions must both be filed to bring about a waiver hearing; trial court may not proceed with waiver hearing where time limits under s. 48.25 for delinquency petition are not complied with. In Interest of Michael J.L. 174 W (2d) 131, 496 NW (2d) 758 (Ct. App. 1993).

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.

(5) Subsections (1) to (4) do not apply to petitions to initiate a proceeding under s. 48.375 (7).

History: 1977 c. 354; 1991 a. 263.

CHIPS petition which alleged that a child was the victim of sexual abuse but contained no information giving rise to an inference that there was something the court could do for the child which was not already being provided was insufficient. Interest of Courtney E. 184 W (2d) 592, 516 NW (2d) 422 (1994).

48.257 Petition to initiate a procedure to waive parental consent prior to a minor's abortion. (1) A petition to initiate a proceeding under s. 48.375 (7) shall be entitled, "In the interest of 'Jane Doe', a person under the age of 18", and shall set forth with specificity:

(a) The name "Jane Doe" and the minor's date of birth.

(b) A statement that the minor is pregnant and the estimated gestational age of the fetus at the time that the petition is filed, and a statement that the minor is seeking an abortion.

(c) The name and address of the person who intends to perform or induce the abortion, if known. If that person is not known, the name and address of the clinic or other medical facility that intends to perform or induce the abortion, if known.

(d) A request for waiver of the parental consent requirement under s. 48.375 (4).

(e) A statement alleging that the minor is mature and well–informed enough to make her own decision on whether or not to have an abortion and facts sufficient to establish that the minor is mature enough and well–informed enough to make her own decision.

(f) A statement alleging that, if the circuit court does not find that the minor is mature enough and well–informed enough to make her own decision, the circuit court should find that having an abortion is in the minor's best interest and facts sufficient to establish that an abortion is in the minor's best interest.

(g) A statement acknowledging that the minor has been fully informed of the risks and consequences of abortion and the risks and consequences of carrying the pregnancy to term.

(h) If the minor is not represented by counsel, the place where and the manner in which the minor wishes to be notified of proceedings under s. 48.375 (7) until appointment of counsel under s. 48.375 (7) (a) 1. If the petition is filed by a member of the clergy on behalf of the minor, the place where and manner in which the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).

(2) The director of state courts shall provide simplified forms for use in filing a petition under this section to the clerk of circuit court in each county.

(3) The minor who is seeking the abortion shall sign the name "Jane Doe" on the petition to initiate a proceeding under s. 48.375 (7). No other person may be required to sign the petition.

(4) The clerk of circuit court shall give a copy of the petition to the minor or to the member of the clergy who files a petition on behalf of the minor, if any.

(5) The minor, or the intake worker under s. 48.067 (7m), shall file the completed petition under this section with the clerk of circuit court.

(6) No filing fee may be charged for a petition under this section.

History: 1991 a. 263, 315.

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) (a) The court shall also notify, under s. 48.273, the child, any parent, guardian and legal custodian of the child and any person specified in par. (b), if applicable, 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 notice to any interested party shall be written and have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 48.13 and if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.60 and if paternity has not been established, the court shall notify, under s. 48.273, all of the following persons:

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

b. A person alleged to the court to be the father of the child or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

(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.

(4m) The court shall also notify, under s. 48.273, any victim or alleged victim of the child's act or alleged act or a family member of a homicide victim of any hearing under s. 48.31 or 48.335 involving the child.

(5) Subject to sub. (3) (b), 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).

(9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only to the minor, her counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and her guardian ad litem, if any. The notice shall contain the title and case number of the proceeding, and the nature, location, date and time of the hearing or other proceeding. Notice to the minor or to the member of the clergy, if any, shall be provided as requested under s. 48.257 (1) (h) and, after appointment of the minor's counsel, if any, by her counsel.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 W (2d) xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395.

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, other than a person specified in s. 48.27 (4m), 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.

(4) (a) Subsections (1) and (3) do not apply to any proceeding under s. 48.375 (7).

(b) Personal service is required for notice of all proceedings under s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the minor shall be in the manner and at the place designated in the petition under s. 48.257 (1) until appointment of the minor's counsel, if any, under s. 48.375 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7) unless the minor waives the immediate notice. If the minor waives the immediate notice, the notice shall be served at least 24 hours before the time of the hearing under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of providing the minor's full signature.

(c) The expenses of service of notice and the travel expenses and fees allowed in ch. 885 incurred by any person who is required to appear, other than the minor who is named in the petition, in any

proceeding under s. 48.375 (7) shall be paid by the county in which the circuit court that holds the proceeding is located.

History: 1977 c. 354; 1979 c. 300; 1991 a. 263; 1993 a. 98.

Employing balancing test, court concluded service under this section is applicable to members of Indian tribe. In Interest of M.L.S., 157 W (2d) 26, 458 NW (2d) 541 (Ct. App. 1990).

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 a proceeding under s. 48.12 or 48.13, the court shall order the child's parent to provide a statement of income, assets and living expenses to the county department and shall order that parent to reimburse the state or county in accordance with par. (b) or (c). The court may not order reimbursement if a parent is the complaining or petitioning party or if the court finds that the interests of the parent and the interests of the child in the proceeding are substantially and directly adverse and that reimbursement would be unfair to the parent. The court may not order reimbursement until the completion of the proceeding or until the state or county is no longer providing the child with legal counsel in the proceeding.

(b) If this state provides the child with legal counsel and the court orders reimbursement under par. (a), the county department shall determine whether the parent is indigent as provided under s. 977.07 and shall determine the amount of reimbursement. If the parent is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent 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 and the court orders reimbursement under par. (a), the court shall either make a determination of indigency or shall appoint the county department to make the determination. If the court or the county department finds that the parent is not indigent or is indigent in part, the court shall establish the amount of reimbursement and shall order the parent to pay it.

(cg) The court shall, upon motion by a parent, 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 and the child are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent.

(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.

(dm) Within 30 days after each calendar quarter, the clerk of court for each county shall report to the state public defender all of the following:

1. The total amount of reimbursement determined or ordered under par. (b) or (cr) for state–provided counsel during the previous calendar quarter.

2. The total amount collected under par. (d) for state–provided counsel during the previous calendar quarter.

(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.

(3) This section does not apply to any of the following:

(a) The parents of a person who is subject to s. 48.366 with respect to the costs of the person's legal representation for a hearing under s. 48.366.

(b) Any proceeding under s. 48.375 (7).

History: 1977 c. 29, 354, 449; 1981 c. 20; 1983 a. 27; 1985 a. 29, 176; 1987 a. 27; 1991 a. 263; 1993 a. 98, 446.

Guardian ad litem fees are not reimbursable under (2) (a). In Interest of G. & L.P. 119 W (2d) 349, 349 NW (2d) 743 (Ct. App. 1984).

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; Stats. 1977 s. 48.28; 1979 c. 331, 359.

The issuance of a capias to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T.J. 181 W (2d) 82, 510 NW (2d) 735 (Ct. App. 1993).

48.29 Substitution of judge. (1) Except as provided in sub. (1g), 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. 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.

(1g) The child may not request the substitution of a judge in a proceeding under s. 48.12 or 48.13 (12) that is commenced within one year after the entry of a dispositional order in another proceeding under this chapter in which the child requested the substitution of a judge.

(1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. Except as provided in sub. (2), if the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

(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. Except as provided in sub. (1g), 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 the waiver hearing, the judge who conducted the waiver hearing may also conduct the plea hearing.

(3) Subsections (1) to (2) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom she wishes to be assigned to the proceeding and that judge shall be assigned to the proceeding.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1979 c. 300; 1987 a. 151; 1991 a. 263; 1993 a. 98.

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 and 972.11 (5) shall be applicable in all delinquency proceedings under this chapter except the court shall establish the timetable for ss. 971.23 (3), (8) and (9) and 972.11 (5).

(3) Upon request prior to the fact–finding hearing, counsel for the interests of the public shall disclose to the child, child's counsel or guardian ad litem the existence of any videotaped oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the requesting person to view the videotaped oral statement. If, subsequent to compliance with this subsection, the state obtains possession, custody or control of such a videotaped statement, counsel for the interests of the public shall promptly notify the requesting person of that fact and make reasonable arrangements for the requesting person to view the videotaped oral statement.

History: 1977 c. 354; 1985 a. 262; 1989 a. 121; 1993 a. 16.

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

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 or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, 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, alcohol or other drug dependency, mental or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) 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 or assessment before ordering the examination or assessment. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

(1c) Reasonable cause is considered to exist to warrant an alcohol and other drug abuse assessment under sub. (1) if any of the following applies:

(a) The multidisciplinary screen procedure conducted under s. 48.24 (2) indicates that the child is at risk of having needs and problems related to alcohol or other drug abuse.

(b) The child was adjudicated delinquent on the basis of an offense specified in ch. 161.

(c) The greater weight of the evidence at a fact–finding hearing indicates that any offense which formed the basis for the adjudication was motivated by the child's need to purchase or otherwise obtain alcohol beverages or controlled substances.

(1g) If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days after the court order, report the results of the assessment to the court, except that, upon request by the approved treatment facility and if the child is not held in secure or nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child is in need of treatment for abuse of alcohol beverages or controlled substances or education relating to the use of alcohol beverages and controlled substances and, if so, shall recommend a service plan and an appropriate treatment, from an approved treatment facility, or a court–approved education program.

(2) (a) If there is probable cause to believe that the child has committed the alleged offense and if there is reason to doubt the child's competency 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.

(b) The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel and to the child's counsel. The report shall describe the nature of the examination and identify the persons interviewed, the particular records reviewed and any tests administered to the child. If the examination is ordered following a plea under s. 48.30 (4) (c), the report shall also contain an opinion regarding whether the child suffered from mental disease or defect at the time of the commission of the act alleged in the petition and, if so, whether this caused the child to lack substantial capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law. If the examination is ordered following a finding that there is probable cause to believe that the child has committed the alleged offense and that there is reason to doubt the child's competency to proceed, the report shall also contain an opinion regarding the child's present mental capacity to understand the proceedings and assist in his or her defense and, if the examiner reports that the child lacks competency to proceed, the examiner's opinion regarding the likelihood that the child, if provided treatment, may be restored to competency within the time specified in s. 48.30 (5) (e) 1. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

(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.

(4) Motions or objections under this section may be heard under s. 807.13.

History: 1977 c. 354; 1979 c. 300; 1985 a. 321; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 339; 1993 a. 474.

Judicial Council Note, 1988: Sub. (4) allows oral argument on motions or objections under this section to be heard by telephone. [Re Order effective Jan. 1, 1988]

48.296 Testing for HIV infection and certain diseases. (1) In this section:

(a) "Health care professional" has the meaning given in s. 252.15 (1) (am).

(b) "HIV" has the meaning given in s. 252.01 (1) [252.01 (1m)].

NOTE: The bracketed language indicates the correct cross–reference.

(c) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

(d) "Significantly exposed" has the meaning given in s. 252.15 (1) (em).

(2) In a proceeding under s. 48.12 or 48.13 (12) in which the child is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, the district attorney or corporation counsel shall apply to the court for an order requiring the child to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease and to disclose the results of that test or series of tests as specified in sub. (4) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for that order.

(b) The district attorney or corporation counsel has probable cause to believe that the child has significantly exposed the victim or alleged victim. If the child is adjudicated delinquent or found to be in need of protection or services, this paragraph does not apply.

(3) The district attorney or corporation counsel may apply for an order under sub. (2) at any of the following times:

(a) At or after the plea hearing and before a dispositional order is entered.

(b) At any time after the child is adjudicated delinquent or found to be in need of protection or services.

(4) On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If, after hearing, the court finds probable cause to believe that the child has significantly exposed the victim or alleged victim, the court shall order the child to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. The court shall require the health care professional who performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), from making the test results part of the child's permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the child.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the child, upon request by the parent, guardian or legal custodian of the child.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(6) The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests 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 is subject to s. 46.03 (18).

History: 1993 a. 32, 227, 491, 495.

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.

(7) Oral argument permitted on motions under this section may be heard by telephone under s. 807.13 (1).

History: 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 W (2d) xiii (1987).

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

48.299 Procedures at hearings. (1) (a) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. 48.16 or 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 other than a proceeding under s. 48.375 (7), if a parent or guardian objects. All hearings under s. 48.375 (7) shall be held in chambers, unless a public fact–finding hearing is demanded by the child through her counsel. 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. Except in a proceeding under s. 48.375 (7), 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.

(am) Subject to s. 906.15, if a public hearing is not held, in addition to persons permitted to attend under par. (a), a victim of a child's act or alleged act may attend a hearing under s. 48.31, a hearing under s. 48.335 and any hearing by a court exercising jurisdiction under s. 48.17 (2), based upon the act or alleged act, except that a judge may exclude a victim from any portion of a hearing which deals with sensitive personal matters of the child or the child's family and which does not directly relate to the act or alleged act committed against the victim. A member of the vic-

tim's family and, at the request of the victim, a representative of an organization providing support services to the victim, may attend the hearing under this subsection.

(b) Except as provided in ss. 48.375 (7) (c) and 48.396, 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. This paragraph does not preclude a victim of the child's act from commencing a civil action based upon the child's act.

(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. Section 972.11 (5) applies at fact–finding proceedings in all delinquency proceedings under this chapter.

(b) Except as provided in s. 901.05, 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 hearing under s. 48.296 (4) for a child who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, 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 or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 48.209 (1) (e) or 48.21 (1) may be held on the record by telephone or live audio–visual means or testimony may be received by telephone or live audio–visual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audio–visual means may be made by telephone.

(6) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice, alleges that he is the father of the child and states that he wishes to establish the paternity of the child, the court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.458 (1) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child. The court may stay the proceedings under this chapter pending the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter and the determination of paternity is necessary to the court's disposition of the child if the child is found to be in need of protection or services. As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the child's mother relating to the child's paternity. A record made under this subsection is admissible in a proceeding to determine the child's paternity under ss. 767.45 to 767.60.

History: 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395.

Judicial Council Note, 1988: Sub. (5) allows a judicial review of the status of a child held in a county jail, or a continuation of custody hearing, to be held by telephone conference, or telephoned testimony to be admitted at such a hearing, on request of any party, unless good cause to the contrary is shown. [Re Order effective Jan. 1, 1988]

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

Sub. (1) (am) allows relatives of homicide victims to attend the fact– finding hearing but not the dispositional hearing. In Interest of Shawn B. N. 173 W (2d) 343, 497 NW (2d) 141 (Ct. App. 1992).

48.30 Plea hearing. (1) Except as provided in this subsection, 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 after 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 after the filing of a petition or issuance of a citation for a child who is being held in secure custody. In a municipal court operated jointly by 2 or more cities, towns or villages under s. 755.01 (4), the hearing to determine the child's plea shall take place within 45 days after the filing of a petition or issuance of a citation for a child who is not 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 under s. 48.29 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;

(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) (a) If there is probable cause to believe that the child has committed the alleged offense and if there is reason to doubt the child's competency to proceed, or if the child enters a plea of not responsible by reason of mental disease or defect, the court shall order an examination under s. 48.295 and shall specify the date by which the report must be filed in order to give the district attorney or corporation counsel and the child's counsel a reasonable opportunity to review the report. The court shall set a date for hearing as follows:

1. 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 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.

2. 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 defect.

3. If the court has found probable cause to believe that the child has committed the alleged offense and reason to doubt the child's competency to proceed, the hearing to determine whether the child is competent to proceed shall be held no more than 10 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child who is not held in secure custody.

(b) If the court, after a hearing under par. (a) 1. or 2., finds that the child was responsible, the court shall proceed to a dispositional hearing.

(bm) If the court, after a hearing under par. (a) 3., finds that the child is competent to proceed, the court shall resume the delinquency proceeding.

(c) If the court finds that the child was not responsible by reason of mental disease or defect, as described under s. 971.15 (1) and (2), the court shall dismiss the petition with prejudice and shall also do one of the following:

1. If the court finds that there is probable cause to believe that the child meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.22, 46.23 or 46.215 in the county of the child's residence or the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition alleging that the child is in need of protection or services under s. 48.13 (14).

(d) If the court finds that the child is not competent to proceed, as described in s. 971.13 (1) and (2), the court shall suspend proceedings on the petition and shall also do one of the following:

1. If the court finds that there is probable cause to believe that the child meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.22, 46.23 or 46.215 in the county of the child's residence or the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition alleging that the child is in need of protection or services under s. 48.13 (14).

(e) 1. A child who is not competent to proceed, as described in s. 971.13 (1) and (2), but who is likely to become competent to proceed within 12 months or the maximum sentence that may be imposed on an adult for the most serious delinquent act with which the child is charged, whichever is less, and who is committed under s. 51.20 following an order under par. (d) 1. or who is placed under a dispositional order following an order under par. (d) 2., shall be periodically reexamined with written reports of those reexaminations to be submitted to the court every 3 months and within 30 days before the expiration of the child's commitment or dispositional order. Each report shall indicate either that the child has become competent, that the child remains incompetent but that attainment of competence is likely within the remaining period of the commitment or dispositional order or that the child has not made such progress that attainment of competency is likely within the remaining period of the commitment or dispositional order.

2. The court shall cause copies of the reports under subd. 1. to be transmitted to the district attorney and the child's counsel. If a report under subd. 1. indicates that the child has become competent, the court shall hold a hearing within 10 days after the court receives the report to determine whether the child is competent. If the court determines that the child is competent, the court shall terminate the child's commitment or dispositional order and resume the delinquency proceeding.

3. If the child is receiving medication, the court may make appropriate orders for the continued administration of the medication in order to maintain the competence of the child for the duration of the proceeding.

(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 it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department under s. 46.25 (9) and listing the factors that a court may consider under s. 46.10 (14) (c). 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).

(10) The court may permit any party to participate in hearings under this section by telephone or live audio–visual means except a child who intends to admit the facts of a delinquency petition.

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 W (2d) xvii (1990); 1993 a. 163, 474, 481.

There is no right to jury determination of responsibility under (5). In Interest of R.H.L. 159 W (2d) 653, 464 NW (2d) 848 (Ct. App. 1990).

The time limits under sub. (1) are mandatory; failure to comply results in the court's loss of competency and is properly remedied by dismissal without prejudice. In Interest of Jason B. 176 W (2d) 400, 500 NW (2d) 384 (Ct. App. 1993).

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. 950.02, the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10) 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 (11m). 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 to be in need of protection and services under s. 48.13 (11m), the court shall not find that the child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages or controlled substances and its medical, personal, family or social effects unless an assessment for alcohol and other drug abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted by an approved treatment facility. 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 it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department under s. 46.25 (9) and listing the factors that a court may consider under s. 46.10 (14) (c). 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; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481.

As matter of judicial administration, supreme court mandates procedures for withdrawal of juvenile's jury demand. In Interest of N.E. 122 W (2d) 198, 361 NW (2d) 693 (1985).

Fact–finding hearing under (1) was not closed until court ruled on motion to set aside verdict. In Interest of C.M.L. 157 W (2d) 152, 458 NW (2d) 573 (Ct. App. 1990).

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.

(fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension hearing under s. 48.365 due to the child having run away or otherwise having made himself or herself unavailable to receive that notice.

(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.

(1m) Subsection (1) (a), (d), (e) and (g) does not apply to proceedings under s. 48.375 (7).

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 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; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98.

Trial court's sua sponte adjournment of fact–finding hearing beyond 30–day limit due to congested calendar constitutes good cause under (2) when adjournment order is entered within 30–day period. In Matter of J.R. 152 W (2d) 598, 449 NW (2d) 52 (Ct. App. 1989).

See note to 48.365 citing In Interest of B.J.N. 162 W (2d) 635, 469 NW (2d) 845 (1991).

The period under sub. (1) (c) includes the time required to assign the new judge, send any required notices, notify the parties and arrange for time on the court's calendar; applicable time limits for plea hearings apply after the assignment of the new judge. In Interest of Joshua M.W. 179 W (2d) 335, 507 NW (2d) 141 (Ct. App. 1993).

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, including any conditions specified in subs. (1d), (1g) and (1t). 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. If the consent decree includes any conditions specified in sub. (1g), the consent decree shall include provisions for payment of the services as specified in s. 48.361. The consent decree shall be reduced to writing and given to the parties.

(1d) If the petition alleges that the child has committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the child's county of residence and if the judge or juvenile court commissioner determines that volunteer supervision under that volunteers in probation program will likely benefit the child and the community, the judge or juvenile court commissioner may establish as a condition under sub. (1) that the child be placed with that volunteers in probation program under such conditions as the judge or juvenile court commissioner determines are reasonable and appropriate. These conditions may include, but need not be limited to, any of the following:

(a) A directive to a volunteer to provide for the child a role model, informal counseling, general monitoring and monitoring of the conditions established by the judge or juvenile court commissioner, or any combination of these functions.

(b) Any other conditions that the judge or juvenile court commissioner may establish under this section.

(1g) If the petition alleges that the child committed a violation specified under ch. 161 and if the multidisciplinary screen conducted under s. 48.24 (2) shows that the child is at risk of having needs and problems related to the use of alcohol beverages or controlled substances and its medical, personal, family and social effects, the judge or juvenile court commissioner may establish as a condition under sub. (1) any of the following:

(a) That the child participate in outpatient treatment from an approved treatment facility for alcohol and other drug abuse, if an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) was completed under s. 48.295 (1).

(b) That the child participate in a court–approved education program that is related to alcohol and other drug abuse.

(1r) If the conditions of the consent decree provide for an alcohol and other drug abuse outpatient treatment program under sub. (1g) (a), the child or, if the child has not attained the age of 12, the child's parent, guardian or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into a consent decree for the provision of alcohol and other drug abuse outpatient treatment.

(1t) (a) 1. Subject to subd. 3., if the petition alleges that the child committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the judge or juvenile court commissioner may require the child, if the child is 12 years of age or older, as a condition of the consent decree, to repair damage to property or to make reasonable restitution for the damage or injury if the judge or juvenile court commissioner, after taking into consideration the well–being and needs of the victim, considers it beneficial to the well–being and behavior of the child. Any consent decree that includes a condition of restitution shall include a finding that the child alone is financially able to pay and may allow up to the date of the expiration of the consent decree 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 made part of the consent decree.

2. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a child who is 12 or 13 years of age who is participating in a restitution project provided by the county may, for the purpose of making restitution under the consent decree, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103.

3. Under this paragraph, a judge or juvenile court commissioner may not order a child who is 12 or 13 years of age to make more than $250 in restitution.

(b) 1. The court or juvenile court commissioner may require a child to participate in a supervised work program, as a condition of the consent decree, if the child has attained the age of 12 and the county has a supervised work program in accordance with s. 48.34 (9) (a). 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 the staff of the county department or community agency or other qualified person. The program may not conflict with the child's regular attendance at school. Subject to subd. 3., the amount of work required shall be reasonably related to the seriousness of the child's offense.

2. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a child who is 12 or 13 years of age who is participating in a community service project provided by the county may, for purposes of performing community service work ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103.

3. Under this paragraph, a judge or juvenile court commissioner may not order a child who is 12 or 13 years of age to perform more than 40 total hours of community service work.

(2) (a) Except as provided in par. (b), 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.

(b) If the proceeding is for a petition which alleges that the child is in need of protection and services, and if the proceeding is based on an allegation of habitual truancy, a consent decree shall remain in effect for up to one year unless the child, parent, guardian or legal custodian is discharged sooner by the judge or juvenile court commissioner.

(c) 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.

(6) The judge or juvenile court commissioner shall inform the child and the child's parent, guardian or legal custodian, in writing, of the child's right to object to the continuation of the consent decree under sub. (3) and the fact that the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

History: 1977 c. 354; 1985 a. 311; 1987 a. 27, 285, 339; 1991 a. 213, 253, 315; 1993 a. 98.

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 is based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 48.295, which employs the least restrictive means available to accomplish the objectives of the plan, and, in cases of child abuse or neglect, which also includes an assessment of risks to the child's physical safety and physical health and a description of a plan for controlling the risks.

(c) A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family, the persons or agencies that would be primarily responsible for providing those services, and the identity of the person or agency that would provide case management or coordination of services if any or whether or not the child should receive an integrated service plan.

(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.

(e) A plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled.

(f) If the agency is recommending that the court order the child's parent, guardian or legal custodian to participate in mental health treatment, anger management, individual or family counseling or parent training and education, a statement as to the availability of those services and as to the availability of funding for those services.

NOTE: Par. (f) is created eff. 12–1–95 by 1993 Wis. Act 377.

(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 department 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 all of the following:

NOTE: Sub. (3) (intro.) is repealed and recreated eff. 7–1–95 by 1993 Wis. Act 481 to read:

(3) CORRECTIONAL PLACEMENT REPORTS. (intro.) A report recommending placement of a child in a secured correctional facility shall be in writing and, in addition to the information specified under sub. (1) (a) to (d), shall include all of the following:

(a) A description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate.

(b) A recommendation for an amount of child support to be paid by either or both of the child's parents or for referral to the county designee under s. 59.07 (97) for the establishment of child support.

(3m) YOUTHFUL OFFENDER PROGRAM REPORTS. In addition to the report under sub. (1), if it appears that a child may be suitable for participation in the youthful offender program under s. 48.537, the court shall order the department of corrections to submit a written report analyzing the child's suitability for participation in that program and recommending whether the child should be placed in that program.

NOTE: Sub. (3m) is created eff. 12–1–95 by 1993 Wis. Act 377.

(4) OTHER OUT–OF–HOME PLACEMENTS. A report recommending placement in a foster home, treatment foster home, group home or child caring institution shall be in writing and shall include all of the following:

(a) A permanency plan prepared under s. 48.38.

(b) A recommendation for an amount of child support to be paid by either or both of the child's parents or for referral to the county designee under s. 59.07 (97) for the establishment of child support.

(4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (3) or (4), the agency shall consider the factors that the court considers under s. 46.10 (14) (c) for deviation from the percentage standard. Prior to the dispositional hearing under s. 48.335, the agency shall provide the child's parent with all of the following:

(a) A copy of its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 46.10 (14) (c).

(c) A written explanation of how the parent may request a revision under s. 48.363 in the amount of child support ordered by the court under s. 48.355 (2) (b) 4.

(5) IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT; CONFIDENTIALITY. If the report recommends placement in a foster home or a treatment foster home, and the name of the foster parent or treatment 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 or treatment 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 or treatment 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; 1987 a. 27, 339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481.

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.

NOTE: This section is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

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 (1) 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; 1993 a. 377.

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.

(3m) (a) Before imposing a disposition in a proceeding in which a child is adjudged to be delinquent under s. 48.12 or is found to be in need of protection or services under s. 48.13 (12) based on a violation that would be a felony if committed by an adult, the court shall allow a victim or a family member of a homicide victim to make a statement or to submit a written statement to be read to the court. The court may allow any other person to make or submit a statement under this paragraph. Any statement made under this paragraph must be relevant to the disposition.

(b) After a finding that a child is delinquent under s. 48.12 or in need of protection or services under s. 48.13 (12) based on a violation that would be a felony if committed by an adult, the district attorney or corporation counsel shall attempt to contact any known victim or family member of a homicide victim to inform that person of the right to make a statement under par. (a). The district attorney or corporation counsel may mail a letter or form to comply with this paragraph. Any failure to comply with this paragraph is not a ground for an appeal of a dispositional order or for any court to reverse or modify a dispositional order.

(3r) At hearings under this section, a parent of the child may present evidence relevant to the amount of child support to be paid by either or both parents.

(4) At hearing under this section, s. 48.357, 48.363 or 48.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audio–visual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

(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; Sup. Ct. Order, 141 W (2d) xiii (1987); 1993 a. 98, 481.

Judicial Council Note, 1988: Sub. (4) allows the court to admit testimony on the record by telephone or live television at hearings on disposition, revision and extension of orders, or change of placement, on request of any party, unless good cause is shown. [Re Order effective Jan. 1, 1988]

Petitioner bears ordinary burden of proof, the greater weight of the credible evidence, for purposes of dispositional and extension hearings. In Interest of T.M.S. 152 W (2d) 345, 448 NW (2d) 282 (Ct. App. 1989).

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), (5), (7m) or (15). The dispositions under this section are:

NOTE: Sec. 48.34 (intro.) is amended eff. 7–1–95 by 1993 Wis. Act 491 to read:

48.34 (intro.) 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), (5), (7m) or (15) and a disposition under sub. (4m) must be combined with a disposition under sub. (4n). 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.

NOTE: Sub. (2) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(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, 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.

NOTE: Sub. (2m) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(2m) Place the child in the child's 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, family or group counseling, homemaker or parent aide services, respite care, housing assistance, day care or parent skills training.

(2r) Order the child to participate in an intensive supervision program under s. 48.534.

(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 or treatment 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.

(3g) If the judge places the child in the community under sub. (2m), (2r), (3) or (10), the judge may order the child to be monitored by an electronic monitoring system.

(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 any of the following:

(a) A relative of the child.

(b) A county department.

(c) A licensed child welfare agency.

(4g) Transfer legal custody to the department of corrections for participation in the youthful offender program under s. 48.537, but only if all of the following apply:

(a) The child is 16 years of age or over and has been adjudicated delinquent for committing an act that would be punishable as a Class A, B, C or D felony if committed by an adult and the child has been adjudicated delinquent or found to be in need of protection or services previously for committing an act that would be a felony if committed by an adult.

(b) The child has been the subject of a previous dispositional order under this section or s. 48.345 and $30,000 or more has been expended on providing services for the child under the previous dispositional order since the child attained the age of 12 years.

(c) The judge finds that the only other disposition that would be appropriate for the child would be placement of the child in a secured correctional facility.

(d) The report under s. 48.33 (3m) recommends placement of the child in the youthful offender program.

NOTE: Sub. (4g) is created eff. 12–1–95 by 1993 Wis. Act 377.

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

NOTE: Sub. (4m) (intro.) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read: (4m) (intro.) Place the child in a secured correctional facility under the supervision of the department, 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.

(4n) Subject to any arrangement between the department and a county department regarding the provision of aftercare supervision for children, designate one of the following to provide aftercare supervision for the child following the child's release from a secured correctional facility:

(a) The department.

(b) The county department of the county of the court that placed the child in the secured correctional facility.

(c) The county department of the child's county of legal residence.

NOTE: Sub. (4n) is created eff. 7–1–95 by 1993 Wis. Act 385.

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

(4r) (a) In addition to any other dispositions imposed under this section, if the child is found to have violated ch. 161, the judge shall suspend or revoke the child's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended or revoked license and forward it to the department of transportation together with the notice of suspension or revocation clearly stating that the suspension or revocation is for a violation of ch. 161.

(b) This subsection does not apply to violations under s. 161.573 (2), 161.574 (2) or 161.575 (2) or a local ordinance that strictly conforms to one of those statutes.

(c) If the child's license or operating privilege is currently suspended or revoked or the child does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this subsection is effective on the date on which the child is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

(4s) (a) In addition to any other dispositions imposed under this section, if the child is found to have violated s. 161.41 (2r), (3), (3m), (3n), (3p) or (3r), the judge shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500.

(am) In addition to any other dispositions imposed under this section, if the child is found to have violated s. 161.41 (1) or (1m), the judge shall order one of the following penalties:

1. For a first violation, a forfeiture of not less than $250 nor more than $500.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500.

(b) After ordering a disposition under par. (a) or (am), the judge, with the agreement of the child, may enter an additional order staying the execution of the dispositional order. If a judge stays a dispositional order under this paragraph, he or she shall enter an additional order requiring the child to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an assessment conducted under subd. 1. or s. 48.295 (1) recommends treatment.

3. Participate in a court–approved alcohol or other drug abuse education program.

(c) If the approved treatment facility, with the written informed consent of the child or, if the child has not attained the age of 12, the written informed consent of the child's parent, notifies the agency primarily responsible for providing services to the child that the child has submitted to an assessment under this subsection and that the child does not need treatment or education, the judge shall notify the child of whether or not the original dispositional order will be reinstated.

(d) If the child completes the alcohol or other drug abuse treatment program or court–approved education program, the approved treatment facility or court–approved education program shall, with the written informed consent of the child or, if the child has not attained the age of 12, the written informed consent of the child's parent, notify the agency primarily responsible for providing services to the child that the child has complied with the order and the judge shall notify the child of whether or not the original dispositional order will be reinstated.

(e) If an approved treatment facility or court–approved education program, with the written informed consent of the child or, if the child has not attained the age of 12, the written informed consent of the child's parent, notifies the agency primarily responsible for providing services to the child that a child is not participating in the program or that a child has not satisfactorily completed a recommended alcohol or other drug abuse treatment program or an education program, the judge shall impose the original disposition under par. (a) or (am).

(5) (a) Subject to par. (c), 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, after taking into consideration the well–being and needs of the victim, 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 may allow up to the date of the expiration of the order 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.

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a child who is 12 or 13 years of age who is participating in a restitution project provided by the county may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103.

(c) Under this subsection, a court may not order a child who is 12 or 13 years of age to make more than $250 in restitution.

(6) (a) If the child is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the child's parent to provide the special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this par-

agraph may not include an order for the administration of psychotropic drugs.

(b) Payment for the special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

(6m) If the report prepared under s. 48.33 recommends that the child is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, the judge may order that an integrated service plan be developed and implemented.

NOTE: Sub. (6m) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(6m) If the report prepared under s. 48.33 (1) recommends that the child is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, the judge may order that an integrated service plan be developed and implemented.

(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.

(7m) If the child is adjudicated delinquent under a violation of s. 161.41 (2r), (3), (3m), (3n), (3p) or (3r) by possessing or attempting to possess a controlled substance listed in schedule I or II under ch. 161 while in or on the premises of a scattered–site public housing project, as defined in s. 161.01 (20i), while in or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, as defined in s. 161.01 (12m), a multiunit public housing project, as defined in s. 161.01 (14m), a swimming pool open to members of the public, a youth center, as defined in s. 161.01 (22), or a community center, while on or otherwise within 1,000 feet of any private or public school premises or while on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the judge shall require that the child participate for 100 hours in a supervised work program under sub. (9) or perform 100 hours of other community service work.

(8) If the judge finds that no other court services or alternative services are needed or appropriate, the judge may impose a forfeiture based upon a determination that this disposition is in the best interest of the child and in aid of rehabilitation. The maximum forfeiture that a judge may impose under this subsection for a violation by a child is the maximum amount of the fine that may be imposed on an adult for committing that violation. 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 period of suspension, 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 of supervisors. 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 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 the staff of the county department or community agency or other qualified person. The program may not conflict with the child's regular attendance at school. Subject to par. (d), the amount of work required shall be reasonably related to the seriousness of the child's offense.

(c) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a child who is 12 or 13 years of age who is participating in a community service project provided by the county may, for purposes of performing community service work ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103.

(d) Under this subsection, a court may not order a child who is 12 or 13 years of age to perform more than 40 total hours of community service work.

(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.

(12) EDUCATION PROGRAM. (a) Except as provided in par. (d), the judge may order the child to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the child resides.

2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a vocational, technical and adult education [technical college] district located in the school district in which the child resides.

NOTE: The vocational, technical and adult education system was renamed the technical college system by 1993 Wis. Act 399.

(b) The judge shall order the school board to disclose the child's pupil records, as defined under s. 118.125 (1) (d), to the county department or licensed child welfare agency responsible for supervising the child, as necessary to determine the child's compliance with the order under par. (a).

(c) The judge shall order the county department or licensed child welfare agency responsible for supervising the child to disclose to the school board, vocational, technical and adult education [technical college] district board or private, nonprofit, non-

sectarian agency which is providing an educational program under par. (a) 3. records or information about the child, as necessary to assure the provision of appropriate educational services under par. (a).

NOTE: The vocational, technical and adult education system was renamed the technical college system by 1993 Wis. Act 399.

(d) This subsection does not apply to a child with exceptional educational needs, as defined under s. 115.76 (3).

(13) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 recommends that the child is in need of treatment for the use or abuse of alcohol beverages or controlled substances and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child as to whether the child is cooperating with the treatment and whether the treatment appears to be effective.

NOTE: Par. (a) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(a) If the report prepared under s. 48.33 (1) recommends that the child is in need of treatment for the use or abuse of alcohol beverages or controlled substances and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child as to whether the child is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 recommends that the child is in need of education relating to the use of alcohol beverages or controlled substances, the court may order the child to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

NOTE: Par. (b) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(b) If the report prepared under s. 48.33 (1) recommends that the child is in need of education relating to the use of alcohol beverages or controlled substances, the court may order the child to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

(c) Payment for the court ordered treatment or education under this subsection in counties that have a pilot program under s. 48.547 shall be in accordance with s. 48.361.

(14) VOLUNTEERS IN PROBATION PROGRAM. If the child is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the child's county of residence and if the judge determines that volunteer supervision under that volunteers in probation program will likely benefit the child and the community, placement of the child with that volunteers in probation program under such conditions as the judge determines are reasonable and appropriate. These conditions may include, but need not be limited to, any of the following:

(a) A directive to a volunteer to provide for the child a role model, informal counseling, general monitoring and monitoring of the conditions established by the judge, or any combination of these functions.

(b) Any other disposition that the judge may impose under this section, except a disposition under sub. (4m).

(15) DEOXYRIBONUCLEIC ACID ANALYSIS AND REPORTING REQUIREMENTS. (a) 1. If the child is adjudicated delinquent on the basis of a violation of s. 940.225, 948.02 (1) or (2) or 948.025, the court shall require the child to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. If the violation is of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025, the court shall require the child to comply with the reporting requirements under s. 175.45. If the violation is of s. 940.225 (3) or (3m), the court may require the child to comply with the reporting requirements under s. 175.45 if the court determines that the underlying conduct was seriously sexually assaultive in nature and that it would be in the interest of public protection to have the child report under s. 175.45.

2. Except as provided in subd. 1., if the child is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the child to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. The court may require the child to comply with the reporting requirements under s. 175.45 if the court determines that the underlying conduct was seriously sexually assaultive in nature and that it would be in the interest of public protection to have the child report under s. 175.45.

3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or 2. may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(b) The department of justice shall promulgate rules providing procedures for children to provide specimens under par. (a) and for the transportation of those specimens to the state crime laboratories under s. 165.77.

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; 1985 a. 176, 311; 1987 a. 27, 285, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39, 213, 253; 1993 a. 16, 87, 98, 118, 227, 281, 377, 385, 446, 480, 490, 491.

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).

Delinquent confined to Lincoln Hills is prisoner under 940.20 (1). In Interest of C.D.M. 125 W (2d) 170, 370 NW (2d) 287 (Ct. App. 1985).

Lost wages are not allowable item of restitution under (5). In Interest of B.S.: State v. B.S., 133 W (2d) 136, 394 NW (2d) 750 (Ct. App. 1986).

Order for restitution to insurance company for offense admitted to by juvenile which was "read–in" and dismissed, upheld. In Interest of R.W.S. 162 W (2d) 862, 471 NW (2d) 16 (1991).

A disposition need not be linked to the offense. The court's obligation is to fashion a program of care, protection and rehabilitation appropriate to the child regardless of the nature of the offense. Interest of James P. 180 W (2d) 677, 510 NW (2d) 730 (Ct. App. 1993).

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.

48.341 Delinquency adjudication; restriction on firearm possession. Whenever a court adjudicates a child delinquent for an act that if committed by an adult in this state would be a felony, the court shall inform the child of the requirements and penalties under s. 941.29.

History: 1993 a. 195.

48.342 Disposition; truancy and school dropout ordinance violations. (1) If the judge finds that the child violated a municipal ordinance enacted under s. 118.163 (2), the judge shall enter an order making one or more of the following dispositions if such a disposition is authorized by the municipal ordinance:

(a) 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 judge shall immediately take possession of the suspended license and forward it to the department of transportation together with a notice stating the reason for and duration of the suspension.

(b) Order the child to participate in counseling, community service or a supervised work program under s. 48.34 (9).

(c) Order the child to remain at home except during hours in which the child is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a child to leave his or her home if the child is accompanied by a parent or guardian.

(d) Order the child to attend an educational program under s. 48.34 (12).

(2) (a) Except as provided in par. (b), if the judge finds that the child is subject to a municipal ordinance enacted under s. 118.163 (2m), the court shall enter an order suspending the child's operating privilege, as defined in s. 340.01 (40), until the child reaches the age of 18.

(b) The judge may enter an order making any of the dispositions specified under sub. (1) if the judge finds that suspension of the child's operating privilege, as defined in s. 340.01 (40), until the child reaches the age of 18 would cause an undue hardship to the child or the child's family.

History: 1987 a. 285; 1993 a. 363.

48.343 Disposition of child adjudged to have violated a civil law or an ordinance. Except as provided by ss. 48.342 and 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 the maximum forfeiture that may be imposed on an adult for committing that violation. 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 period of suspension, 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, after taking into consideration the well–being and needs of the victim, 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 may allow up to the date of the expiration of the order 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.

(9) If the violation is one under s. 23.33 or under an ordinance enacted in conformity with s. 23.33 concerning the use of all–terrain vehicles, order the child to enroll and participate in an all–terrain vehicle safety course.

(10) If the violation is related to the use or abuse of alcohol beverages or controlled substances, order the child to do any of the following:

(a) Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to perform the assessment and shall specify the date by which the assessment must be completed.

(b) Participate in an outpatient alcohol and other drug abuse treatment program if an assessment conducted under par. (a) or s. 48.295 (1) recommends treatment.

(c) Participate in an alcohol or other drug abuse education program.

History: 1977 c. 354; 1979 c. 300, 331; 1983 a. 420; 1985 a. 29, 311; 1987 a. 27, 200, 285, 339; 1991 a. 39, 213; 1993 a. 98.

See note to 48.19 citing In Interest of J.F.F. 164 W (2d) 10, 473 NW (2d) 546 (Ct. App. 1991).

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

(a) "Court" means a municipal court or the court assigned to exercise jurisdiction under this chapter, except as provided in sub. (2g).

(2) If a court finds a child committed a violation under s. 125.07 (4) (b) or 125.09 (2), or a local ordinance that strictly conforms to one of those statutes, 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 $500, 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).

(2b) If a court finds a child committed a violation under s. 125.07 (4) (a), or a local ordinance which strictly conforms to s. 125.07 (4) (a), it shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $250 nor more than $500, 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 less than $300 nor more than $500, 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 $500, 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).

(2d) If a court finds a child committed a violation under s. 125.085 (3) (b), or a local ordinance which strictly conforms to s. 125.085 (3) (b), it shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $100 nor more than $500, 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 less than $300 nor more than $500, 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 $500, 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).

(2e) (a) If a court finds a child committed a violation under s. 161.573 (2), 161.574 (2) or 161.575 (2), or a local ordinance that strictly conforms to one of those statutes, it shall suspend or revoke the child's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years and, in addition, shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50 or the child's participation in a supervised work program under s. 48.34 (9) or both.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100 or the child's participation in a supervised work program under s. 48.34 (9) or both.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or the child's participation in a supervised work program under s. 48.34 (9) or both.

(b) Whenever a court suspends or revokes a child's operating privilege under this subsection, the court shall immediately take possession of any suspended or revoked license and forward it to the department of transportation, together with the notice of suspension or revocation clearly stating that the suspension or revocation is for a violation under s. 161.573 (2), 161.574 (2) or 161.575 (2), or a local ordinance that strictly conforms to one of those statutes.

(c) If the child's license or operating privilege is currently suspended or revoked or the child does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this subsection is effective on the date on which the child is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

(2g) (a) After ordering a penalty under sub. (2), (2b), (2d) or (2e), the court assigned to exercise jurisdiction under this chapter, with the agreement of the child, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this paragraph shall require the child to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an alcohol or other drug abuse assessment conducted under subd. 1. or s. 48.295 (1) recommends treatment.

3. Participate in a court–approved alcohol or other drug abuse education program.

(b) If the approved treatment facility, with the written informed consent of the child or, if the child has not attained the age of 12, the written informed consent of the child's parent, notifies the agency primarily responsible for providing services to the child that the child has submitted to an assessment under par. (a) and that the child does not need treatment or education, the court assigned to exercise jurisdiction under this chapter shall notify the child of whether or not the penalty will be reinstated.

(c) If the child completes the alcohol or other drug abuse treatment program or court–approved education program, the approved treatment facility or court–approved education program shall, with the written informed consent of the child or, if the child has not attained the age of 12, the written informed consent of the child's parent, notify the agency primarily responsible for providing services to the child that the child has complied with the order and the court assigned to exercise jurisdiction under this chapter shall notify the child of whether or not the penalty will be reinstated.

(d) If an approved treatment facility or court–approved education program, with the written informed consent of the child or, if the child has not attained the age of 12, the written informed consent of the child's parent, notifies the agency primarily responsible for providing services to the child that a child is not participating in the program or that a child has not satisfactorily completed a recommended alcohol or other drug abuse treatment program or an education program, the court assigned to exercise jurisdiction under this chapter shall hold a hearing to determine whether the penalties under sub. (2), (2b), (2d) or (2e) should be imposed.

(2m) For purposes of subs. (2) to (2e), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(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. This subsection does not apply to violations under s. 161.573 (2), 161.574 (2) or 161.575 (2) or a local ordinance that strictly conforms to one of those statutes.

History: 1979 c. 331, 359; 1981 c. 79 s. 18; 1983 a. 74 ss. 1 to 4, 32; 1985 a. 47; 1987 a. 339; 1989 a. 31, 121, 336; 1991 a. 39; 1993 a. 480.

48.345 Disposition of child adjudged in need of protection or services. (1) If the judge finds that the child is in need of protection or services, the judge 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 order may not do any of the following:

(a) Transfer the custody of the child to the department.

NOTE: Par. (a) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(a) Place the child in a secured correctional facility.

NOTE: Par. (a), as affected by 1993 Wis. Acts 377 and 385, is amended eff. 12–1–95 by 1993 Wis. Act 491 to read:

(a) Place the child in a secured correctional facility or transfer the custody of the child to the department of corrections.

(b) Order restitution.

(c) Order payment of a forfeiture.

(d) Restrict, suspend or revoke the driving privileges of the child, except as provided under sub. (2).

(e) 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.

(f) Order the child to participate in a supervised work program under s. 48.34 (9), except as provided under sub. (2).

(2) If the judge finds that a child is in need of protection or services based on the fact that the child is a school dropout, as defined in s. 118.153 (1) (b), or based on habitual truancy, and the judge also finds that the reason the child has dropped out of school or is a habitual truant is a result of the child's intentional refusal to

attend school rather than the failure of any other person to comply with s. 118.15 (1) (a), the judge, instead of or in addition to any other disposition imposed under sub. (1), may enter an order permitted under s. 48.342.

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491.

An adult sentence cannot run consecutive to a juvenile disposition. State v. Woods, 173 W (2d) 129, 496 NW (2d) 144 (Ct. App. 1992).

48.346 Notice to victims of children's acts. (1) Each known victim of a child's act shall receive timely notice of the following information:

(a) The procedure for obtaining the identity of the child and the child's parents.

(b) The procedure under s. 48.396 (5) for obtaining the child's police records.

(c) The potential liability of the child's parents under s. 895.035.

(d) Either of the following:

1. General information regarding any informal agreement under s. 48.245, any consent decree under s. 48.32 or any dispositional order under ss. 48.34 to 48.345. The information shall not include specific details of the order except for details relating to restitution or repair to property. This subdivision does not affect the right of a victim to attend a dispositional hearing as provided in s. 48.299 (1) (am).

2. The procedure the victim may follow for obtaining the information in subd. 1.

(e) The procedure under s. 48.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a child who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06 to submit to a test or a series of tests to detect the presence of HIV, as defined in s. 252.01 (1) [252.01 (1m)], antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease, as defined in s. 252.11 (1), and to have the results of that test or series of tests disclosed as provided in s. 48.296 (4) (a) to (e).

NOTE: The bracketed language indicates the correct cross–reference.

(f) The time and place of any hearing that the victim may attend under s. 48.299 (1) (am).

(g) The right to make a statement to the court as provided in s. 48.335 (3m), if the victim is a victim of a delinquent act that would be a felony if committed by an adult.

(2) The notice under sub. (1) shall include an explanation of the restrictions on divulging information obtained under this chapter and the penalties for violations.

(3) If an inquiry or proceeding is closed, dismissed or otherwise does not result in an informal agreement, consent decree or dispositional order, a reasonable attempt shall be made to inform each known victim of the child's alleged act that the inquiry or proceeding has been terminated.

(4) If the victim is a child, the notice under this section shall be given to the child's parents, guardian or legal custodian.

(5) Chief judges and circuit judges shall establish by policy and rule procedures for the implementation of this section. The policies and rules shall specify when, how and by whom the notice under this section shall be provided to victims.

History: 1985 a. 311; 1987 a. 27; 1993 a. 32, 98, 227, 491.

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.

4. The fact that a child has been adjudged delinquent on the basis of unlawfully and intentionally killing a person is admissible for the purpose of s. 852.01 (2m) (bg).

(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.

(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; 1985 a. 321; 1987 a. 222.

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, consistent with the protection of the public. Wherever possible, and, in cases of child abuse and neglect, when it is consistent with the child's best interest in terms of physical safety and physical health 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.

NOTE: Sub. (1) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(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, consistent with the protection of the public. Wherever possible, and, in cases of child abuse and neglect, when it is consistent with the child's best interest in terms of physical safety and physical health 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 (1), the court shall consider that information when deciding on a placement and treatment finding.

(2) CONTENT OF ORDER; COPY TO PARENT. (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 ordered, including findings as to the child's condition and need for special treatment or care if an examination or assessment was conducted under s. 48.295. A finding may not include a finding that a child is in need of psychotropic medications.

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

1. The specific services or continuum of services to be provided to the child and family, the identity of the agencies which are to be primarily responsible for the provision of the services

mandated by the judge, the identity of the person or agency who will provide case management or coordination of services, if any, 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 if the placement is a foster home or treatment foster home and the name and address of the foster parent or treatment foster parent is not available at the time of the order, the name and address of the foster parent or treatment foster parent shall be furnished to the court and the parent within 21 days of the order. 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 or treatment foster parent would result in imminent danger to the child, the foster parent or the treatment foster parent, the judge may order the name and address of the prospective foster parents or treatment foster parents withheld from the parent or guardian.

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

4. If the child is placed outside the child's home, a designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county designee under s. 59.07 (97) for establishment of child support.

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.

6. If the child is placed outside the home, the court's finding as to whether a county department which provides social services or the agency primarily responsible for the provision of services under a court order has made reasonable efforts to prevent the removal of the child from the home or, if applicable, that the agency primarily responsible for the provision of services under a court order has made reasonable efforts to make it possible for the child to return to his or her home.

7. A statement of the conditions with which the child is required to comply.

(c) If school attendance is a condition of an order under par. (b) 7., the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district in which the child is enrolled to notify the county department that is responsible for supervising the child within 5 days after any violation of the condition by the child.

(d) The court shall provide a copy of the dispositional order to the child's parent, guardian or trustee.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether a county department which provides social services or the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's welfare effectively in the home.

2. Financial assistance, if applicable, was provided to the family.

3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:

a. In–home support services, such as homemakers and parent aides.

b. In–home intensive treatment services.

c. Community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services.

d. Specialized services for family members with special needs.

4. Monitoring of client progress and client participation in services was provided.

5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

(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, to the child or the child's counsel or guardian ad litem and to the person representing the interests of the public.

(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. (a) Except as provided under par. (b) or s. 48.368, all orders under this section shall terminate at the end of one year unless the judge specifies a shorter period of time. Except if s. 48.368 applies, 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.

NOTE: Par. (a), as affected by 1993 Wis. Act 446, is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(a) Except as provided under par. (b) or s. 48.368, all orders under this section shall terminate at the end of one year unless the judge specifies a shorter period of time. Except if s. 48.368 applies, 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 who

is under the supervision of the department under s. 48.34 (4m) or (4n) or under the supervision of a county department under s. 48.34 (4n) 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.

NOTE: Par. (a), as affected by 1993 Wis. Acts 377, 385 and 446, is amended eff. 12–1–95 by 1993 Wis. Act 491 to read:

(a) Except as provided under par. (b) or s. 48.368, all orders under this section shall terminate at the end of one year unless the judge specifies a shorter period of time. Except if s. 48.368 applies, 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 of corrections under s. 48.34 (4g) or who is under the supervision of the department of health and social services under s. 48.34 (4m) or (4n) or under the supervision of a county department under s. 48.34 (4n) 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.

(b) An order under s. 48.34 (4m) for which a child has been adjudicated delinquent is subject to par. (a), except that the judge may make the order apply for up to 2 years or until the child's 19th birthdate, whichever is earlier.

NOTE: Par. (b) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(b) An order under s. 48.34 (4g) or (4m) for which a child has been adjudicated delinquent is subject to par. (a), except that the judge may make an order under s. 48.34 (4m) apply for up to 2 years or until the child's 19th birthdate, whichever is earlier, and the judge shall make an order under s. 48.34 (4g) apply for 5 years, if the child is adjudicated delinquent for committing an act that would be punishable as a Class B, C or D felony if committed by an adult, or until the child reaches 25 years of age, if the child is adjudicated delinquent for committing an act that would be punishable as a Class A felony if committed by an adult.

(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.

(6) SANCTIONS FOR VIOLATION OF ORDER. (a) If a child who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the court may impose on the child one of the sanctions specified in par. (d) if, at the dispositional hearing under s. 48.335, the court explained the conditions to the child and informed the child of the possible sanctions under par. (d) for a violation.

(b) A motion for imposition of a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the district attorney or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the child, guardian ad litem, counsel, parent, guardian, legal custodian and all parties present at the original dispositional hearing.

(c) Before imposing any sanction, the court shall hold a hearing, at which the child is entitled to be represented by legal counsel and to present evidence.

(d) The court may order any one of the following sanctions:

1. Placement of the child in a secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule, for not more than 10 days and educational services consistent with his or her current course of study during the period of placement.

2. Suspension of or limitation on the use of the child's operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for a period of not more than 90 days. If the court suspends the child's operating privileges or an approval issued under ch. 29, it shall immediately take possession of the suspended license or approval and forward it to the department that issued it, together with the notice of suspension.

3. Detention in the child's home or current residence for a period of not more than 20 days under rules of supervision specified in the order. An order under this subdivision may require the child to be monitored by an electronic monitoring system.

4. Not more than 25 hours of uncompensated community service work in a supervised work program authorized under s. 48.34 (9).

(6g) CONTEMPT FOR CONTINUED VIOLATION OF ORDER. (a) If a child upon whom the court has imposed a sanction under sub. (6) (d) commits a 2nd or subsequent violation of a condition specified in sub. (2) (b) 7., the district attorney may file a petition under s. 48.12 charging the child with contempt of court, as defined in s. 785.01 (1), and reciting the disposition under s. 48.34 sought to be imposed. The district attorney may bring the motion on his or her own initiative or on the request of the judge who imposed the condition specified in sub. (2) (b) 7. or who imposed the sanction under sub. (6) (d). If the district attorney brings the motion on the request of the judge who imposed the condition specified in sub. (2) (b) 7. or who imposed the sanction under sub. (6) (d), that judge is disqualified from holding any hearing on the contempt petition.

(b) The court may find a child in contempt of court, as defined in s. 785.01 (1), and order a disposition under s. 48.34 only if the court makes all of the following findings:

1. That the child has previously been sanctioned under sub. (6) (d) for violating a condition specified in sub. (2) (b) 7. and, subsequent to that sanction, has committed another violation of a condition specified in sub. (2) (b) 7.

2. That at the sanction hearing the court explained the conditions to the child and informed the child of a possible finding of contempt for a violation and the possible consequences of that contempt.

3. That the violation is egregious.

4. That the court has considered less restrictive alternatives and found them to be ineffective.

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS AND OTHER ADULTS. In addition to any dispositional order entered under s. 48.34 (4s) or (13) or 48.345 for a child's use or abuse of a controlled substance or alcohol beverage, the court may enter an order applicable to a child's parent, guardian or legal custodian or to another adult, as provided under s. 48.45.

NOTE: Sub. (7) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS AND OTHER ADULTS. In addition to any dispositional order entered under s. 48.34 or 48.345, the court may enter an order applicable to a child's parent, guardian or legal custodian or to another adult, as provided under s. 48.45.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491.

Mandatory time limits affect trial court's competency to act, but objection must be raised before trial court to avoid waiver. In Interest of L.M.C. 146 W (2d) 377, 430 NW (2d) 352 (Ct. App. 1988).

Unless trial court fully complies with (2) (b) 7 and (6) (a), it may not impose sanctions pursuant to (6) (d). In Interest of F.T. 150 W (2d) 216, 441 NW (2d) 322 (Ct. App. 1989).

See note to 48.365, citing In Interest of W.P. 153 W (2d) 50, 449 NW (2d) 615 (1990).

Constitutionality of (6) upheld. In Interest of B.S. 162 W (2d) 378, 469 NW (2d) 860 (Ct. App. 1991).

48.356 Duty of court to warn. (1) Whenever the court 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 court 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.

(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; 1989 a. 86; 1991 a. 39.

Substantial compliance is not adequate to meet (2) notice provision; oral, rather than written, notice is insufficient. In re D.F. 147 W (2d) 486, 433 NW (2d) 592 (Ct. App. 1988).

See note to 48.415 citing In Interest of K.K. 162 W (2d) 431, 469 NW (2d) 881 (Ct. App. 1991).

To comply with sub. (2), the written order needs to contain the same information as the oral notice under sub. (1); that the notice contained more does not mean sub. (2) was violated. In Interest of Jamie L. 172 W (2d) 218, 493 NW (2d) 56 (1992).

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, foster 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 person receiving the notice under this subsection or notice of the specific foster or treatment 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 person who received notice alleges that new information is available which affects the advisability of the court's dispositional order. If a hearing is held under this subsection and the change in placement would remove a child from a foster home, the foster parent may submit a written statement prior to the hearing.

(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, foster 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. If a hearing is held under this subsection and the change in placement would remove a child from a foster home, the foster parent may submit a written statement prior to the hearing.

(3) If the proposed change in placement would involve placing the child with the department 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.

NOTE: Sub. (3) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(3) If the proposed change in placement would involve placing a child, other than a child on aftercare, in a secured correctional facility, 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 department, the department may, after an examination under s. 48.50, place the child in a secured correctional facility or place the child on aftercare or corrective sanctions supervision, 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.

NOTE: Sub. (4) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(4) When the child is placed with the department, the department may, after an examination under s. 48.50, place the child in a secured correctional facility or on aftercare or corrective sanctions supervision, 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, county department designated under s. 48.34 (4n), if any, and committing court.

(4g) (a) Not later than 120 days after the date on which the child is placed in a secured correctional facility, or not less than 30 days before the date on which the department determines that the child is eligible for release to aftercare supervision, whichever is earlier, the aftercare provider designated under s. 48.34 (4n) shall prepare an aftercare plan for the child. If the aftercare provider designated under s. 48.34 (4n) is a county department, that county department shall submit the aftercare plan to the department within the time limits specified in this paragraph, unless the department waives those time limits under par. (b).

(b) The department may waive the time period within which an aftercare plan must be prepared and submitted under par. (a) if the department anticipates that the child will remain in the secured correctional facility for a period exceeding 8 months, if the child is subject to extended jurisdiction under s. 48.366 or if the child is under corrective sanctions supervision under s. 48.533. If the department has waived the time period within which an aftercare plan must be prepared and submitted and if there will be a reasonable time period after release from the secured correctional facility or from corrective sanctions supervision during which the child may remain subject to court jurisdiction, the department shall notify the county department providing aftercare supervision of the anticipated release date not less than 60 days before the date on which the child will be eligible for release. If the department waives the time limits specified under par. (a), the aftercare plan shall be prepared by the department or prepared and submitted by the county department providing aftercare supervision on or before the date on which the child becomes eligible for release.

(c) An aftercare plan prepared under par. (a) or (b) shall include all of the following:

1. The minimum number of supervisory contacts per week.

2. The conditions, if any, under which the child's aftercare status may be revoked.

3. Services or programming to be provided to the child while on aftercare.

4. The estimated length of time that aftercare supervision and services shall be provided to the child.

(d) A child may be released from a secured correctional facility or from corrective sanctions supervision whether or not an aftercare plan has been prepared under this subsection.

NOTE: Sub. (4g) is created eff. 7–1–95 by 1993 Wis. Act 385.

(4m) The department shall try to release a child to aftercare or corrective sanctions supervision under sub. (4) within 30 days after the date the department determines the child is eligible for the release.

(5) If a child placed with the department has been released to aftercare or corrective sanctions supervision, revocation of after-

care or corrective sanctions supervision 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. A child under corrective sanctions supervision may be taken into custody under ss. 48.19 to 48.21 or under s. 48.533 (3). The child shall be entitled to representation by counsel at all stages of the revocation proceeding. The hearing shall be conducted by the division of hearings and appeals in the department of administration. Review of a revocation decision shall be by certiorari to the court by whose order the child was placed with the department.

NOTE: Sub. (5) is renumbered sub. (5) (a) and amended and sub. (5) (e) and (g) are created eff. 7–1–95 by 1993 Wis. Act 385 to read:

(5) (a) The department or a county department, whichever has been designated as a child's aftercare provider under s. 48.34 (4n), may revoke the aftercare status of that child. The department may revoke a child's placement in the community under corrective sanctions supervision. Revocation of aftercare or corrective sanctions supervision shall not require prior notice under sub. (1).

(b) A child on aftercare status may be taken into custody only as provided in ss. 48.19 to 48.21. A child under corrective sanctions supervision may be taken into custody under ss. 48.19 to 48.21 or under s. 48.533 (3).

(c) The child shall be entitled to representation by counsel at all stages of the revocation proceeding.

(d) A hearing on the revocation shall be conducted by the division of hearings and appeals in the department of administration within 30 days after the child is taken into custody for an alleged violation of the conditions of the child's aftercare or corrective sanctions supervision. This time limit may be waived only upon the agreement of the aftercare or corrective sanctions provider, the child and the child's counsel.

(e) If the hearing examiner finds that the child has violated a condition of aftercare or corrective sanctions supervision, the hearing examiner shall determine whether confinement in a secured correctional facility is necessary to protect the public or to provide for the child's rehabilitation.

(f) Review of a revocation decision shall be by certiorari to the court by whose order the child was placed in a secured correctional facility.

(g) The department shall promulgate rules setting standards to be used by a hearing examiner to determine whether to revoke a child's aftercare or corrective sanctions status. The standards shall specify that the burden is on the department or county department seeking revocation to show by a preponderance of the evidence that the child violated a condition of aftercare or corrective sanctions supervision.

(5m) If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department under s. 46.25 (9) and listing the factors that a court may consider under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

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

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491.

See note to 48.64, citing Bingenheimer v. DHSS, 129 W (2d) 100, 383 NW (2d) 898 (1986).

48.36 Payment for services. (1) (a) 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 or by a change in placement under s. 48.357, 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, or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported to the department, or the county child and spousal support agency, under s. 46.25 (2m). If the court has insufficient information with which to determine the amount of support, the court shall order the child's parent to furnish a statement of income, assets, debts and living expenses, if the parent has not already done so, to the court within 10 days after the court's order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(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.

History: 1977 c. 354; 1979 c. 221; 1981 c. 81; 1985 a. 29 s. 3202 (23); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446, 481.

48.361 Payment for alcohol and other drug abuse services. (1) In this section, "alcohol and other drug abuse services" means all of the following:

(a) Any alcohol or other drug abuse examination or assessment ordered by a court under s. 48.295 (1).

(b) Any special treatment or care that relates to alcohol or other drug abuse services ordered by a court under s. 48.34 (6) (a).

(c) Any alcohol or other drug abuse treatment or education ordered by a court under s. 48.32 (1g), 48.34 (6) (a) or (13), 48.343 (10) or 48.344 (2g).

(2) (a) 1. If a child's parent is unable to provide or refuses to provide court–ordered alcohol and other drug abuse services for the child through his or her health insurance or other 3rd–party payments, notwithstanding s. 48.36 (3) the judge may order the parent to pay for the court–ordered alcohol and drug abuse services. If the parent consents to provide court–ordered alcohol and other drug abuse services for a child through his or her health insurance or other 3rd–party payments but the health insurance provider or other 3rd–party payer refuses to provide the court–ordered alcohol and other drug abuse services the court may order the health insurance provider or 3rd–party payer to pay for the court–ordered alcohol and other drug abuse services in accordance with the terms of the parent's health insurance policy or other 3rd–party payment plan.

2. This paragraph applies to payment for alcohol and other drug abuse services in any county, regardless of whether the county is a pilot county under s. 48.547.

(am) 1. If a court in a county that has a pilot program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with par. (b).

2. If a court in a county that does not have a pilot program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with s. 48.34 (6) (a) or 48.36.

(b) 1. In counties that have a pilot program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the child's county of legal residence to pay for the court–ordered alcohol and other drug abuse services whether or not custody has been taken from the parent.

2. If a judge orders a county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services

under this paragraph, the provision of the alcohol and other drug abuse services shall be subject to conditions specified in ch. 51.

(c) Payment for alcohol and other drug abuse services by a county department under this section does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of alcohol and other drug abuse services. Payment by the county under this section does not prevent recovery of reasonable contribution toward the costs of the court–ordered alcohol and other drug abuse services from the parent which is based upon the ability of the parent to pay. This subsection is subject to s. 46.03 (18).

History: 1987 a. 339; 1989 a. 56 s. 259; 1993 a. 446.

48.362 Payment for certain special treatment or care services. (1) In this section, "special treatment or care" has the meaning given in s. 48.02 (17m), except that it does not include alcohol and other drug abuse services.

(2) This section applies to the payment of court–ordered special treatment or care under s. 48.34 (6) (a), whether or not custody has been taken from the parent.

(3) If a child's parent is unable to provide or refuses to provide court–ordered special treatment or care for the child through his or her health insurance or other 3rd–party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court–ordered special treatment or care. If the parent consents to provide court–ordered special treatment or care for a child through his or her health insurance or other 3rd–party payments but the health insurance provider or other 3rd–party payer refuses to provide the court–ordered special treatment or care, the judge may order the health insurance provider or 3rd–party payer to pay for the court–ordered special treatment or care in accordance with the terms of the parent's health insurance policy or other 3rd–party payment plan.

(4) (a) If the judge finds that payment is not attainable under sub. (3), the judge may order the county department under s. 51.42 or 51.437 of the child's county of legal residence to pay the cost of any court–ordered special treatment or care that is provided by or under contract with that county department.

(b) Payment for special treatment or care by a county department under par. (a) does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of special treatment or care.

(c) A county department that pays for court–ordered special treatment or care under par. (a) may recover from the parent, based on the parent's ability to pay, a reasonable contribution toward the costs of court–ordered special treatment or care. This paragraph is subject to s. 46.03 (18).

History: 1993 a. 446.

48.363 Revision of dispositional orders. (1) A child, the child's parent, guardian or legal custodian, any person or agency bound by a dispositional order or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent, 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 that 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, all parties bound by the dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If the proposed revision is for a change in the amount of child support to be paid by a parent, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court and the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department under s. 46.25 (9) and listing the factors that a court may consider under s. 46.10 (14) (c). If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

(2) If the court revises a dispositional order under sub. (1) with respect to the amount of child support to be paid by a parent for the care and maintenance of the parent's minor child who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

History: 1977 c. 354; 1979 c. 300; 1985 a. 172; 1993 a. 481.

48.364 Dismissal of certain dispositional orders. A child, the child's parent, guardian or legal custodian or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a judge to dismiss an order made under s. 48.342 (2) if the child shows documentary proof that he or she is enrolled in a school program or a high school equivalency program, or the court may on its own motion propose such a dismissal.

History: 1993 a. 363.

48.365 Extension of orders. (1) In this section, "2 or more years" means a period of time that begins with the first placement of the child outside of his or her home pursuant to an order under this section or s. 48.345, 48.357 or 48.363 and includes any period of time in which the child returned home, unless the periods of time at home account for the majority of the time since the first placement.

(1m) The parent, child, guardian, legal custodian, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered 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, the child's parent, guardian, legal custodian, all the parties present at the original hearing and the district attorney or corporation counsel in the county in which the dispositional order was entered 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. The juvenile offender review program may file a written report regarding any child examined by the program.

(b) If the child is placed outside of his or her home, the report shall include all 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.

3. If the child has been placed outside of his or her home for 2 or more years, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the child. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the child and whether or not the child should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the child be registered with the adoption information exchange or report the reason why registering the child is contrary to the best interest of the child.

(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, including a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home. 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) Except as provided in s. 48.368, 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, not including any period of delay resulting from any of the circumstances specified in s. 48.315 (1).

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

NOTE: Sub. (7) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(7) Nothing in this section may be construed to allow any changes in placement or revocation of aftercare, corrective sanctions or youthful offender supervision. Revocation and other changes in placement may take place only under s. 48.357 or, for a child who is a participant in the youthful offender program, s. 48.537.

History: 1977 c. 354; 1979 c. 300; 1983 a. 351, 399, 538; 1985 a. 172; 1987 a. 383; 1989 a. 31, 86, 107, 359; 1993 a. 16, 98, 377, 446.

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).

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).

See note to 48.355, citing In Interest of L.M.C. 146 W (2d) 377, 430 NW (2d) 352 (Ct. App. 1988).

See note to 48.335, citing In Interest of T.M.S. 152 W (2d) 345, 448 NW (2d) 282 (Ct. App. 1989).

Court may extend dispositional order for 30 days under (6) to consider petition to extend original order even when juvenile turns eighteen during extension period. In Interest of W.P. 153 W (2d) 50, 449 NW (2d) 615 (1990).

Court loses competence to exercise jurisdiction to extend order when hearing is not held within 30–day period under (6); 30–day period may not be expanded by continuance under 48.315 and court's loss of competence cannot be waived. In Interest of B.J.N. 162 W (2d) 635, 469 NW (2d) 845 (1991).

48.366 Extended court jurisdiction. (1) APPLICABILITY. (a) If the person committed any crime specified under s. 940.01, 940.02, 940.05, 940.21 or 940.225 (1) (a) to (c), 948.03 or 948.04, is adjudged delinquent on that basis and is transferred to the legal custody of the department under s. 48.34 (4m), the court shall enter an order extending its jurisdiction as follows:

NOTE: Par. (a) (intro.) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(a) (intro.) If the person committed any crime specified under s. 940.01, 940.02, 940.05, 940.21 or 940.225 (1) (a) to (c), 948.03 or 948.04, is adjudged delinquent on that basis and is placed in a secured correctional facility under s. 48.34 (4m), the court shall enter an order extending its jurisdiction as follows:

1. If the act for which the person was adjudged delinquent was a violation of s. 940.01, the order shall remain in effect until the person reaches 25 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

2. If the act for which the person was adjudged delinquent was any other violation specified in this paragraph, the order shall remain in effect until the person reaches 21 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

(b) If the person committed a crime specified in s. 940.20 (1) or 946.43 while placed in a secured correctional facility and is adjudged delinquent on that basis following transfer of jurisdiction under s. 970.032, the court shall enter an order extending its jurisdiction until the person reaches 21 years of age or until termination of the order under sub. (6), whichever occurs earlier.

(5) REVISION OF ORDER. (a) Any of the following may petition the court for a revision of an order:

1. The person subject to the order.

2. The department or county department having legal custody of the person.

NOTE: Subd. 2 .is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

2. The department or county department ordered under s. 48.34 (4n) to provide aftercare supervision of the person.

(b) The department or county department may, at any time, file a petition proposing either release of a person subject to an order to aftercare supervision or revocation of the person's aftercare supervision. The petition shall set forth in detail:

1. The proposed treatment and supervision plan and proposed institutional placement, if any.

2. Any available information that is relevant to the advisability of revising the order.

(c) The person subject to an order may, no more often than once each year, file a petition proposing his or her release to aftercare supervision. The petition shall set forth in detail:

1. The proposed conditions of aftercare supervision.

2. Any available information that is relevant to the advisability of revising the order.

(d) 1. At the time the department or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the petition. The notice to the person who is the subject of the petition shall state that the person has a right to request a hearing on the petition and, if the petition is for revocation of a person's aftercare supervision, that the person has the right to counsel. The department or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the child was adjudged delinquent and the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), the person shall provide written notice of the petition to the department or county department, as applicable.

(e) In making a determination under this subsection, the court shall balance the needs of the person with the protection of the public.

(f) If the court grants a petition to release a person to aftercare supervision and the person's county of residence is one in which

the county department provides aftercare supervision, the department may contract with the county department under s. 46.036 for aftercare supervision of the person.

(g) Sections 48.357 and 48.363 do not apply to orders under this subsection.

(6) PETITION FOR DISCHARGE; HEARINGS. (a) Any of the following may petition the court that entered an order to terminate the order and to discharge the person subject to the order from supervision:

1. The person subject to the order.

2. The department or the county department having legal custody of the person.

NOTE: Subd. 2. is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

2. The department or county department ordered under s. 48.34 (4n) to provide aftercare supervision of the person.

(b) The petition shall state the factual basis for the petitioner's belief that discharge will not pose a threat of bodily harm to other persons. The department or county department may file a petition at any time. The person subject to the order may file a petition not more often than once a year.

(c) 1. At the time the department or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the petition. The notice to the person who is the subject of the petition shall state that the person has the right to counsel. The department or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the person was adjudged delinquent and to the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), he or she shall provide written notice of the petition to the department or county department, whichever has legal custody of the person.

NOTE: Subd. 2. is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

2. At the time a person subject to an order files a petition under par. (a), he or she shall provide written notice of the petition to the department or county department, whichever has been ordered under s. 48.34 (4n) to provide aftercare supervision of the person.

(d) If the court denies the petition, the person shall remain under the jurisdiction of the court until the expiration of the order or until a subsequent petition for discharge under this subsection is granted, whichever is sooner.

(7) NOTICE OF HEARING. Upon receipt of a request for a hearing under sub. (5) or upon receipt of a petition under sub. (6), the court shall set a date for a hearing on the matter. In any of those cases, the court shall notify the department and each person specified in sub. (5) (d) 1. or (6) (c) 1. of the hearing at least 7 days before the hearing, except that if any such person lives outside of this state, the notice shall be mailed at least 14 days before the hearing.

(8) TRANSFER TO OR BETWEEN FACILITIES. The department may transfer a person subject to an order between secured correctional facilities. After the person attains the age of 18 years, the department may, after consulting with the department of corrections, place the person in a state prison named in s. 302.01. Regardless of the placement, the person remains in the legal custody of the department of health and social services. The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a).

NOTE: Sub. (8) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(8) TRANSFER TO OR BETWEEN FACILITIES. The department may transfer a person subject to an order between secured correctional facilities. After the person attains the age of 18 years, the department may, after consulting with the department of corrections, place the person in a state prison named in s. 302.01. The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a).

History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385.

48.368 Continuation of dispositional orders. If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed during the year in which a dispositional order under s. 48.355 or an extension order under s. 48.365 is in effect, the dispositional or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

History: 1989 a. 86; 1993 a. 446; Stats. 1993 s. 48.368.

48.37 Costs. (1) A court assigned to exercise jurisdiction under this chapter may not assess costs or assessments against a child under 14 years of age but may assess costs against a child 14 years of age or older.

(2) Notwithstanding sub. (1), no costs, penalty assessments or jail assessments may be assessed against any child in a circuit court exercising jurisdiction under s. 48.16.

(3) Notwithstanding sub. (1), courts of civil and criminal jurisdiction exercising jurisdiction under s. 48.17 may assess the same costs, penalty assessments and jail assessments 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; 1987 a. 27; 1991 a. 263; 1993 a. 387.

48.371 Access to certain information by substitute care provider. At the time of placement of a child in a foster home, group home or child caring institution under s. 48.345 or 48.357, or, if the information specified in this section is not available at that time, within 30 days after the date of the placement, the agency that prepared the child's permanency plan shall provide the foster parent or operator of the group home or child caring institution with any information contained in the court report submitted under s. 48.33 or permanency plan submitted under s. 48.38, relating to any of the following:

(1) Results of a test or a series of tests of the child to determine the presence of HIV, as defined in s. 968.38 (1) (b), antigen or nonantigenic products of HIV, or an antibody to HIV, if the child's parent or a temporary or permanent guardian appointed by the court has consented to the test under s. 252.15 (2) (a) 4. b. and release of the test results under s. 252.15 (5) (a) 19. and the agency directed to prepare the permanency plan notifies the foster parent or operator of the group home or child caring institution of the confidentiality requirements under s. 252.15 (6).

(2) Results of any tests of the child to determine the presence of viral hepatitis, type B. The foster parent or operator of a group home or child caring institution receiving information under this subsection shall keep the information confidential.

(3) Findings or opinions of the court or agency that prepared the court report or permanency plan relating to any mental, emotional, cognitive, developmental or behavioral disability of the child. The foster parent or operator of a group home or child caring institution receiving information under this subsection shall keep the information confidential.

History: 1993 a. 395.

NOTE: 1993 Wis. Act 395, which created this section, contains extensive explanatory notes.

48.373 Medical authorization. (1) The court assigned to exercise jurisdiction under this chapter may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and, except as provided in s. 48.296 (4), consents.

(2) Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

(3) In a proceeding under s. 48.375 (7), a circuit court exercising jurisdiction under s. 48.16 may not authorize any medical services other than the performance or inducement of an abortion.

History: 1971 c. 105; 1977 c. 354 s. 64; 1977 c. 449; Stats. 1977 s. 48.373; 1991 a. 263; 1993 a. 32.

48.375 Parental consent required prior to abortion; judicial waiver procedure. (1) LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that:

1. Immature minors often lack the ability to make fully informed choices that take account of both immediate and long–range consequences.

2. The medical, emotional and psychological consequences of abortion and of childbirth are serious and can be lasting, particularly when the patient is immature.

3. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related.

4. Parents ordinarily possess information essential to a physician's exercise of the physician's best medical judgment concerning a minor.

5. Parents who are aware that their minor is pregnant or has had an abortion may better ensure that she receives adequate medical attention during her pregnancy or after her abortion.

6. Parental knowledge of a minor's pregnancy and parental consent to an abortion are usually desirable and in the best interest of the minor.

(b) It is the intent of the legislature in enacting this section to further the purposes set forth in s. 48.01, and in particular to further the important and compelling state interests in:

1. Protecting minors against their own immaturity.

2. Fostering the family structure and preserving it as a viable social unit.

3. Protecting the rights of parents to rear minors who are members of their households.

(2) DEFINITIONS. In this section:

(a) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a minor after implantation of a fertilized human ovum and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) "Adult family member" means any of the following who is at least 25 years of age:

1. Grandparent.

2. Aunt.

3. Uncle.

4. Sister.

5. Brother.

(c) "Counselor" means a physician including a physician specializing in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained member of the clergy. "Counselor" does not include any person who is employed by or otherwise affiliated with a reproductive health care facility, a family planning clinic or a family planning agency; any person affiliated with the performance of abortions, except abortions performed to save the life of the mother; or any person who may profit from giving advice to seek an abortion.

(d) Notwithstanding s. 48.02 (2m), "court" means any circuit court within this state.

(e) "Emancipated minor" means a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority.

(em) "Member of the clergy" has the meaning given in s. 765.002 (1).

(g) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(h) "Referring physician" means a physician who refers a minor to another physician for the purpose of obtaining an abortion.

(3) APPLICABILITY. This section applies whether or not the minor who initiates the proceeding is a resident of this state.

(4) PARENTAL CONSENT REQUIRED. (a) Except as provided in this section, no person may perform or induce an abortion on or for a minor who is not an emancipated minor unless the person is a physician and one of the following applies:

1. The person or the person's agent has, either directly or through a referring physician or his or her agent, received and made part of the minor's medical record the written consent of the minor and the written consent of one of her parents; or of the minor's guardian or legal custodian, if one has been appointed; or of an adult family member of the minor; or of one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor.

2. The court has granted a petition under sub. (7).

(b) Paragraph (a) does not apply if the person who intends to perform or induce the abortion is a physician and any of the following occurs:

1. The person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion.

1g. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record and report the sexual intercourse as required under s. 48.981 (2) or (2m) (e). Any minor who makes a false statement under this subdivision which the minor does not believe is true, is subject to a proceeding under s. 48.12 or 48.13 (12), whichever is applicable, based on a violation of s. 946.32 (2).

1m. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, for consent.

2. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that the pregnancy is the result of sexual intercourse with a caregiver specified in s. 48.981 (1) (am) 1., 2., 3., 4. or 8. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record. The person who intends to perform or induce the abortion shall report the sexual intercourse as required under s. 48.981 (2m) (d) 1.

3. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor, or the minor's guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or a foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, has abused, as defined in s. 48.981 (1) (a), the minor. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record. The person who intends to perform or

induce the abortion shall report the abuse as required under s. 48.981 (2).

(5) COUNSELING. Any minor who is pregnant and who is seeking an abortion and any minor who has had an abortion may receive counseling from a counselor of her choice. A county department may refer the minor to a private counselor.

(6) RIGHT TO PETITION COURT FOR WAIVER. Any pregnant minor who is seeking an abortion in this state, and any member of the clergy on the minor's behalf, may file a petition specified under s. 48.257 with any court for a waiver of the parental consent requirement under sub. (4) (a) 1.

(7) COURT PROCEDURE. (a) *Receipt of petition; initial appearance.* On the date that a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next calendar day, the court shall hold an initial appearance in chambers at which the minor or the member of the clergy who filed the petition on behalf of the minor, if any, is present and shall do all of the following:

1. Appoint legal counsel under s. 48.23 (1) (cm) for the minor if the minor is not represented by counsel.

3. Set a time for a hearing on the petition that will enable the court to comply with the time limit specified in par. (d) 1.

4. Notify the minor, the minor's counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and the minor's guardian ad litem, if any, of the time, date and place of the hearing.

(am) *Guardian ad litem; appointment.* At the initial appearance under par. (a), the court may also, in its discretion, appoint a guardian ad litem under s. 48.235 (1) (d).

(b) *Hearing; evidence.* The court shall hold a confidential hearing on a petition that is filed by a minor. The hearing shall be held in chambers, unless a public fact–finding hearing is demanded by the minor through her counsel. At the hearing, the court shall consider the report of the guardian ad litem, if any, and hear evidence relating to all of the following:

1. The emotional development, maturity, intellect and understanding of the minor.

2. The understanding of the minor about the nature of, possible consequences of and alternatives to the intended abortion procedure.

3. Any other evidence that the court may find useful in making the determination under par. (c).

(bm) *Member of the clergy's affidavit.* If a member of the clergy files a petition under s. 48.257 on behalf of a minor, the member of the clergy shall file with the petition an affidavit stating that the member of the clergy has met personally with the minor and has explored with the minor the alternative choices available to the minor for managing the pregnancy, including carrying the pregnancy to term and keeping the infant, carrying the pregnancy to term and placing the infant with a relative or with another family for adoption or having an abortion, and has discussed with the minor the possibility of involving one of the persons specified in sub. (4) (a) 1. in the minor's decision making concerning the pregnancy and whether or not in the opinion of the minor that involvement would be in the minor's best interests. The court may make the determination under par. (c) on the basis of the ordained member of the clergy's affidavit or may, in its discretion, require the minor to attend an interview with the court in chambers before making that determination. Any information supplied by a minor to a member of the clergy in preparation of the petition under s. 48.257 or the affidavit under this paragraph shall be kept confidential and may only be disclosed to the court in connection with a proceeding under this subsection.

(c) *Determination.* The court shall grant the petition if the court finds that any of the following standards applies:

1. That the minor is mature and well–informed enough to make the abortion decision on her own.

2. That the performance or inducement of the abortion is in the minor's best interests.

(d) *Time limit.* 1. The court shall make the determination under par. (c) and issue an order within 3 calendar days after the initial appearance unless the minor and her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of the time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a certified copy of the court's order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a copy of the court's order denying the petition and shall also notify the minor by her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, that she has a right to initiate an appeal under s. 809.105.

1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to comply with the time limits specified under subd. 1. without the prior consent of the minor and the minor's counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, the minor and the minor's counsel, if any, or the member of the clergy, if any, shall select a temporary reserve judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order granting or denying the petition and the chief judge of the judicial administrative district in which the court is located shall assign the temporary reserve judge selected by the minor and the minor's counsel, if any, or the member of the clergy, if any, to make the determination and issue the order. A temporary reserve judge assigned under this subdivision to make a determination under par. (c) and issue an order granting or denying a petition shall make the determination and issue the order within 2 calendar days after the assignment, unless the minor and her counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of that time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition, and shall notify the minor of the court's order, as provided under subd. 1.

2. Counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall immediately, upon notification under subd. 1. or 1m. that the court has granted or denied the petition, notify the minor. If the court has granted the petition, counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the court order to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this subdivision shall place the copy in the minor's medical record.

(e) *Confidentiality.* The identity of a minor who files or for whom is filed a petition under s. 48.257 and all records and other papers relating to a proceeding under this subsection shall be kept confidential except for use in a forfeiture action under s. 895.037

(2), a civil action filed under s. 895.037 (3) or a child abuse or neglect investigation under s. 48.981.

(f) *Certain persons barred from proceedings.* No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, of any minor who is seeking a court determination under this subsection may attend, intervene or give evidence in any proceeding under this subsection.

(8) APPEAL. An appeal by a minor from an order of the trial court denying a petition under sub. (7) may be taken to the court of appeals as a matter of right under s. 808.03 (1) and is governed by s. 809.105.

History: 1991 a. 263, 315; 1993 a. 112, 230, 446.

Essential holding of Roe v. Wade allowing abortion is upheld, but various state restrictions on abortion are permissible. Planned Parenthood v. Casey, 505 US __, 120 LEd 2d 674 (1992).

SUBCHAPTER VII

PERMANENCY PLANNING; RECORDS

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

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

(am) "Independent agency" means a private, nonprofit organization, but does not include a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(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, treatment 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 department 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.

NOTE: Par. (a) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(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 the child be placed 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 the child's 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.

NOTE: Par. (a) is amended eff. 12–1–95 by 1993 Wis. Act 491 to read:

(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 the child be placed in a secured correctional facility or the department of corrections intends to recommend that custody of the child be transferred to the department of corrections for participation in the youthful offender program, the agency is not required to submit the permanency plan unless the court does not accept the recommendation of the agency or the department of corrections. If the court places the child in any facility outside of the child's 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, the child's treatment foster parent or the 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) The court or a panel appointed under this paragraph 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. If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a).

If the court appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency.

(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, the child's treatment foster parent or the operator of the facility in which the child is living of the date, time and place of the review, of the issues to be determined as part of the review, of the fact that they may submit written comments not less than 10 working days before the review and of the fact that they may participate in the review. The court or agency shall notify the person representing the interests of the public, the child's counsel and the child's guardian ad litem of the date of the review, of the issues to be determined as part of the review and of the fact that they may submit written comments not less than 10 working days before the review. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices 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:

a. Being returned to his or her home;

b. Having a petition for the involuntary termination of parental rights filed on behalf of the child;

c. Being placed for adoption; or

d. Being placed in sustaining care.

7. Whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home.

(d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the person representing the interests of the public, the child's counsel and the child's guardian ad litem a copy of the permanency plan and any written comments submitted under par. (b). Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the child's counsel and the child's guardian ad litem may have access to any other records concerning the child 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 that entered the order, the child or the child's counsel or guardian ad litem, the person representing the interests of the public, the child's parent or guardian and the child's foster parent, the child's treatment foster parent or the operator of the facility where the child is living.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(5m) ANNUAL REPORT. Not later than March 1 annually, each county department shall submit to the department a report identifying the membership of the review panels appointed during the previous year, data on each of the determinations of the review panels required under sub. (5) (c) and any other information specified by the department by rule.

(6) RULES. The department of health and social services 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 and to make it possible for children to return to their homes if they have been placed 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; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491.

NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 W (2d) 222, 499 NW (2d) 219 (Ct. App. 1993).

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. Peace officers' records of children shall not be open to inspection or their contents disclosed except under sub. (1m) or (5) or s. 48.293 or by order of the court. This subsection does 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, 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.

(1m) If requested by the school district administrator of a public school district, a law enforcement agency may provide to the school district administrator any information in its records relating to the use, possession or distribution of alcohol or a controlled substance by a pupil enrolled in the public school district. The information may be used by the school district only as provided under s. 118.127 (2). In this subsection, "controlled substance" has the meaning given in s. 161.01 (4).

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and of courts exercising jurisdiction under s. 48.16 or 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 order of the court assigned to exercise jurisdiction under this chapter or as permitted under this section or s. 48.375 (7) (e).

(b) Upon request of the department or a federal agency 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 or federal agency.

(c) Upon request of a law enforcement agency to review court records for the purpose of investigating a crime that might constitute criminal gang activity, as defined in s. 941.38 (1) (b), the court

shall open for inspection by authorized representatives of the law enforcement agency the records of the court relating to any child who has been found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under ch. 161 or under chs. 939 to 948 if committed by an adult.

(d) Upon request of a court of criminal jurisdiction, a district attorney or a defense counsel to review court records for the purpose of investigating and determining whether a person has possessed a firearm in violation of s. 941.29 (2), the court assigned to exercise jurisdiction under this chapter shall open for inspection by authorized representatives of the requester the records of the court relating to any child who has been adjudicated delinquent for an act that would be a felony if committed by an adult.

(e) Upon request of the department of health and social services to review court records for the purpose of providing, under s. 980.015 (3) (a), the department of justice or a district attorney with a person's offense history, the court shall open for inspection by authorized representatives of the department of health and social services the records of the court relating to any child who has been adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6).

(2m) Notwithstanding sub. (2), upon request, a court shall disclose to the requester the name and age of a child who has been adjudicated delinquent for committing a violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.225 (1) or (2) or 943.32 (2), the nature of the violation committed by that child and the disposition under s. 48.34 imposed on that child as a result of that violation. The requester may further disclose the information to anyone.

(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 ss. 30.67 (1) and 346.67 when death or injury occurs.

(4) When a court revokes, suspends or restricts a child's operating privilege under this chapter, 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.

(5) (a) Any victim of a child's act may petition the court to order the disclosure of the records governed by sub. (1). The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.

2. The reason the information is being sought.

3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought to the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) The court shall notify the child, the child's counsel, the child's parents and appropriate law enforcement agencies in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(c) The court shall make an inspection, which may be in camera, of the child's records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this determination, the court shall balance the following private and societal interests:

1. The petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the child's interest in rehabilitation and in avoiding the stigma that might result from disclosure.

2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the child's records. All records related to a decision under this subsection are confidential.

(6) Notwithstanding sub. (5), a victim of a child's act or alleged act may, with the approval of the court, obtain the names of the child and the child's parents.

(7) (a) If a child is adjudged delinquent, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the child's parent that the court clerk will notify the school board of the school district in which the child is enrolled of the fact that the child has been adjudicated delinquent unless the child's parent requests, in writing, within 5 days after the date of notification of the child's parent, that the information not be provided. Notwithstanding sub. (2) (a) and subject to par. (b), if the court clerk does not receive a request from the child's parent within 5 days after the date of notification of the child's parent that the information not be provided, the court clerk shall notify the school board of the school district in which the child is enrolled of the fact that the child has been adjudicated delinquent. Notwithstanding sub. (2) (a), if school attendance is a condition of a dispositional order under s. 48.355 (2) (b) 7., within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district in which the child is enrolled of the fact that the child's school attendance is a condition of a dispositional order.

(b) If a child is found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under ch. 161 or under chs. 939 to 948 if committed by an adult and is adjudged delinquent on that basis, within 5 days after the date on which the dispositional order is entered the court clerk shall notify the principal of the child's school and the school board of the school district in which the child is enrolled of the fact that the child has been adjudicated delinquent on that basis.

(c) No information from the child's court records, other than information disclosed under par. (a) or (b), may be disclosed to the principal of the child's school or to the school board of the school district in which the child is enrolled except by order of the court. Any information provided to the principal of the child's school or to the school board of the school district in which the child is enrolled under this subsection may be disclosed by the principal or by the school board only to employes of the school district who have been determined by the principal or by the school board to have legitimate educational interests in the information.

(8) Notwithstanding sub. (2), if a child is adjudged delinquent for an act that would be a felony if committed by an adult, the court clerk shall notify the department of justice of that fact. No other information from the child's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a criminal history record search under s. 175.35 (2g) (c).

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491.

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).

Circuit court has no authority to expunge juvenile police records when delinquency petition is dismissed. In Interest of E.C. 130 W (2d) 376, 387 NW (2d) 72 (1986).

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) Except as otherwise provided, "agency" means the department, a county department 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 obligations existing between parent and child are permanently severed.

History: 1979 c. 330; 1985 a. 176.

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.

Terminating parental rights. Hayes and Ogorchok. Wis. Law. June 1989.

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, or has permitted an attorney who represents any of the parties to question 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 an embassy or consul official, a military judge or a judge of any court of record in another county or state or a foreign jurisdiction. This written consent shall be accompanied by the signed findings of the embassy or consul official or judge who accepted the parent's consent. These findings shall recite that the embassy or consul official or judge or an attorney who represents any of the parties questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or 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) If in any proceeding to terminate parental rights voluntarily a guardian ad litem has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the court. The court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If the court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights under s. 48.415.

History: 1979 c. 330; 1981 c. 384; 1983 a. 352, 447; 1987 a. 383; Sup. Ct. Order, 151 W (2d) xxv (1989).

Judicial Council Note, 1990: Sub. (3) is repealed and recreated because the so–called substituted judgment permitted therein is bad public policy. New sub. (3) deals with the situation in which there is reason to doubt the competency of a parent who wishes to consent to the termination of his or her parental rights. Any party or guardian ad litem with reason to doubt such competency is required to so inform the court. The court must then make an inquiry in whatever way is appropriate. This may mean a simple discussion with the person, an examination, the appointment of experts to examine the person, a hearing or whatever seems proper in the discretion of the court. If the court finds the person incapable of making an informed and voluntary termination of parental rights, the court must dismiss the proceeding. If appropriate, an involuntary proceeding may then be commenced. A finding that the parent is competent does not obviate the need for a record that he or she has in fact given informed and voluntary consent prior to entry of a termination order. In Interest of D.L.S., 112 Wis. 2d 180, 196–97 (1983). [Re Order effective Jan. 1, 1990]

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 or jury 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 ordered 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 or, if the child had not attained the age of 3 years at the time of the initial order placing the child outside of the home, that the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders; and that the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12–month period following the fact–finding hearing under s. 48.424.

(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 PERIODS OF PHYSICAL PLACEMENT. Continuing denial of periods of physical placement may be established by a showing that:

(a) The parent has been denied periods of physical placement by court order in an action affecting the family; and

(b) At least 1 year has elapsed since the order denying periods of physical placement was issued and the court has not subsequently modified its order so as to permit periods of physical placement.

(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.

(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 filing of a petition for termination of parental rights although the father had reason to believe that he was the father of the child and has not assumed parental responsibility for 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.

(7) INCESTUOUS PARENTHOOD. Incestuous parenthood may be established by a showing that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(8) INTENTIONAL HOMICIDE OF PARENT. Intentional homicide of a parent may be established by a showing that a parent of the child has been a victim of first–degree intentional homicide in violation of s. 940.01 or of 2nd–degree intentional homicide in violation of s. 940.05 and that the person whose parental rights are sought to be terminated has been convicted of that intentional homicide.

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395.

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 s. 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).

Dismissal of termination proceedings on grounds of abandonment because only 2 of 6 dispositional orders contained statutory warnings overturned. Warning is only required on one order. In Interest of K.K. 162 W (2d) 431, 469 NW (2d) 881 (Ct. App. 1991).

One–year abandonment period under (1) (a) 3 need not immediately precede filing of the petition; where abandonment is found termination is still discretionary. In Interest of T.P.S. 168 W (2d) 259, 483 NW (2d) 591 (Ct. App. 1992).

While CHIPS judge must notify the parents of possible termination grounds in the written dispositional order and repeat that information orally to any parent present in court, proof that such oral notice was given is not required in later termination proceedings under sub. (2) (a). In Interest of D.P. 170 W (2d) 313, 488 NW (2d) 133 (Ct. App. 1992).

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

Unwed father who failed to register with New York putative father registry had no constitutional right to notice of adoption proceedings. Lehr v. Robertson, 463 US 248 (1983).

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, unless the child's parent has waived the right to notice under s. 48.41 (2) (d).

(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 and treatment 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 if a physician attests to his or her belief that a sexual assault 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.

(d) Advise the parties that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 15 days after the judgment is entered for the right to pursue such relief to be preserved.

(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 7 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 the parties:

1. That the parental rights of a parent or alleged parent who fails to appear may be terminated;

2. 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; and

3. That if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 40 days after judgment is entered for the right to pursue such relief to be preserved.

History: 1973 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447; 1985 a. 94; Sup. Ct. Order, 136 W (2d) xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395, 446.

Judicial Council Note, 1986: Subs. (3) (d) and (4) (c) are amended to require notice to the parties of the time and manner for initiating an appeal from a judgment terminating parental rights. [Re Order eff. 7–1–87]

See notes to 822.03 citing In Interest of A.E.H, 161 W (2d) 277, 468 NW (2d) 190.

Sub. (2m) denies a putative father standing to contest the alleged grounds for termination where the child was conceived as the result of sexual assault. Termination of Parental Rights to A. M. 176 W (2d) 673, 500 NW (2d) 649 (1993).

Sub. (2) (d) requires consideration in each case whether ch. 822 applies, but does not require the application of ch. 822 to intrastate cases. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

Sub. (2) is the exclusive statute for determining what parties may be summoned; intervention under s. 803.09 does not apply. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

Sexual assault under sub. (2m) does not include a violation of s. 948.09, sexual intercourse with a child age 16 or older. Paternity of Michael A.T. 182 W (2d) 395, 513 NW (2d) 669 (Ct. App. 1994).

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 paternity 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) (am), 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; 1985 a. 176.

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).

Concurrent TPR/adoption proceedings under 48.835 are subject to requirement under 48.422 that initial hearing be held within 30 days of filing petition. In re J.L.F. 168 W (2d) 634, 484 NW (2d) 359 (Ct. App. 1992).

A court's failure to inform parents of their rights under this section is not reversible error absent prejudice to the parents. Interest of Robert D. 181 W (2d) 887, 512 NW (2d) 227 (Ct. App. 1994).

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.

See note to 48.415, citing Lehr v. Robertson, 463 US 248 (1983).

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 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then 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; 1987 a. 383.

Court erred by instructing jury that jury determines whether parental rights are to be terminated. In Interest of C.E.W. 124 W (2d) 47, 368 NW (2d) 47 (1985).

48.425 Court report by an agency. (1) If the petition for the termination of parental rights is filed by an 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 adop-

tion, 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; 1985 a. 176.

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.

Where grandparents opposing termination had a substantial relationship with the child and wished to participate in the proceedings, it was error to exclude their testimony in determining the child's best interest. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

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 authorized to accept guardianship under s. 48.57 (1) (e) or (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.

(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) (am), 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; 1985 a. 70, 176.

Despite jury findings, court may dismiss termination petition if evidence does not support a finding or unfitness evidence is not so egregious as to warrant termination; whether evidence supports termination is matter of discretion. In Interest of K.D.J., 163 W (2d) 90, 470 NW (2d) 914 (1991).

48.428 Sustaining care. (1) A court may place a child in sustaining care if the court has terminated the parental rights of the parent or parents of the child or has appointed a guardian for the child under s. 48.831 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 after an order under s. 48.427, the court shall transfer legal custody of the child to the county department 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 or licensed treatment foster parent with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent or licensed treatment 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 or licensed treatment foster parent may be appointed as a sustaining parent, the foster parent or treatment foster parent shall execute a contract with the agency responsible for providing services to the child, in which the foster parent or treatment 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.

(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; 1985 a. 70; 1985 a. 176; 1989 a. 161; 1993 a. 446.

48.43 Court orders; contents and effect; review. **(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. If the court dismisses the petition under s. 48.427 (2), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427 (3) or (4), the order shall contain all of the following:

(a) The identity of any agency or individual that will receive guardianship or custody of the child upon termination and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

(b) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible.

(c) If an agency receives custody of the child under par. (a), the child's permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan, the agency 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 60 days from the date of the order.

(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 for 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) (a) If the custodian specified in sub. (1) (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child is adopted or reaches 18 years of age, whichever is sooner. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any, and shall describe any progress that has been made in finding a permanent placement for the child.

(b) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (a). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's guardian, the child, if he or she is 12 years of age or over, and the child's foster parent, the child's treatment foster parent or the operator of the facility in which the child is living.

(c) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c), except the determinations relating to the child's parents. The court may amend the order under sub. (1) to transfer the child's guardianship and custody to any agency specified under s. 48.427 (3) (a) 1. to 4. which consents to the transfer, if the court determines that the transfer is in the child's best interest. If an order is amended, 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.

(5m) 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, if he or she is 12 years of age or over, and to the child's foster parent, the child's treatment foster parent or the operator of the facility in which the child is living.

(6) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107.

(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 department. The court shall transfer the child's custody to the county department specified in the petition. The department shall remain the child's guardian.

History: 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 W (2d) xxv (1987); 1987 a. 383; 1993 a. 395, 446.

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) "Adoptee" means a person who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(ag) "Agency" means a county department or a licensed child welfare agency.

(am) "Birth parent" means either:

1. The mother designated on the individual's or adoptee'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 individual or adoptee is conceived or born, or when the parents intermarry under s. 767.60.

(b) "Individual" means a person whose birth parent's rights have been terminated in this state at any time.

(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) to any of the following persons upon request:

1. An individual or adoptee 18 years of age or older.

2. An adoptive parent of an adoptee.

3. The guardian or legal custodian of an individual or adoptee.

4. The offspring of an individual or adoptee if the requester is 18 years of age or older.

5. An agency or social worker assigned to provide services to the individual or adoptee or place the individual 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 individual or adoptee or to the birth parent.

(c) The person making a request under this subsection shall pay a fee for the cost of locating, verifying, purging, summarizing, copying and mailing the medical or genetic information according to a fee schedule established by the department based on ability to pay. The fee may not be more than $150 and may be waived by the department.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about an individual

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 an individual or adoptee, 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 individual or adoptee has or may have acquired a genetically transferable disease or that the individual's or adoptee'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 individual's or adoptee's parents. Upon request by the department, an agency 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) Employes 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 disclosing 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 an adoptee or the termination of parental rights receives a report from a physician stating that a birth parent or another offspring of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the individual or adoptee of the existence of the disease, if he or she is 18 years of age or over, or notify the individual's or adoptee's guardian, custodian or adoptive parent if the individual or adoptee is under age 18.

(b) If the department or agency receives a report from a physician that an individual or adoptee has acquired or may have a genetically transferable disease, the department or agency shall notify the individual's or adoptee'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.

(8m) The department shall give priority to all of the following:

(a) Reports filed by physicians under sub. (7).

(b) A request or a court order for medical or genetic information under subs. (3) and (4) if it is accompanied by a statement from a physician certifying that a child has acquired or may have a genetically transferable disease.

(c) Any reports and requests specified by the department by rule.

(9) The department shall promulgate rules to implement this section.

History: 1981 c. 359; 1983 a. 447, 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31.

48.433 Access to identifying information about parents. (1) In this section:

(a) "Agency" has the meaning given under s. 48.432 (1) (ag).

(b) "Birth parent" has the meaning given under s. 48.432 (1) (am).

(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, unless the search falls within one of the exceptions established by the department by rule. If any information has been provided under sub. (5), the department is not required to conduct a search.

(b) Upon request by the department, an agency 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) Employes 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 or agency designated by 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 promulgate rules to implement this section.

History: 1981 c. 359, 391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31.

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. (1) The court has jurisdiction over persons 18 or older as provided under ss. 48.355 (4) and 48.45 and as otherwise specifically provided in this chapter.

(2) The court has jurisdiction over a person subject to an order under s. 48.366 for all matters relating to that order.

History: 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354; 1987 a. 27; 1989 a. 121.

48.45 Orders applicable to adults. (1) (a) 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.

(b) 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.

(1m) (a) In a proceeding in which a child has been adjudicated delinquent for the use or abuse of a controlled substance or alcohol beverage or has been found to be in need of protection or services for the use or abuse of a controlled substance or alcohol beverage, the judge may order the child's parent, guardian or legal custodian to do any of the following if the child has received the disposition specified in s. 48.34 (13):

2. Participate in an outpatient alcohol and other drug abuse treatment program at an approved treatment facility.

3. Participate in an alcohol or other drug abuse education program approved by the court.

NOTE: Sub. (1m) (a) (intro.) is renumbered sub. (1m) (a) and amended and sub. (1m) (a) 2 and 3 are repealed eff. 12–1–95 by 1993 Wis. Act 377. Effective 12–1–95 sub. (1m) (a) reads:

(1m) (a) In a proceeding in which a child has been adjudicated delinquent or has been found to be in need of protection or services, the judge may order the child's parent, guardian or legal custodian to comply with any conditions determined by the judge to be necessary for the child's welfare. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or parent training and education and to make a reasonable contribution, based on ability to pay, toward the cost of those services.

(b) In a proceeding in which a child has been adjudged delinquent for the violation of s. 161.41 (1), (1m), (2r), (3), (3m), (3n), (3p) or (3r), the judge may order the child's parent, guardian or legal custodian to participate in a drug abuse education program approved by the court if the child of the person has agreed to participate in a drug abuse education program under s. 48.34 (4s) (b).

NOTE: Par. (b) is repealed and recreated eff. 12–1–95 by 1993 Wis. Act 377 to read:

(b) A judge may not order inpatient treatment under par. (a) for a child's parent, guardian or legal custodian. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51.

(2) No order to any person 18 or older under sub. (1) (a) 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 sub. (1) (a) 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.

NOTE: Sub. (2) is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(2) No order under sub. (1) (a) or (1m) (a) may be entered until the person who is the subject of the contemplated order is given an opportunity to be heard on the contemplated order. 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. At the hearing the person may be represented by counsel and may produce and cross–examine witnesses. Any person who fails to comply with any order issued by a court under sub. (1) (a) or (1m) (a) 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.

(2m) No order to any person under sub. (1m) may be entered until the person is given an opportunity to be heard on 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 the hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases to the court. At the hearing, the person may be represented by counsel and may produce and cross–examine witnesses. Any person who fails to comply with any order issued by a court under sub. (1m) may be proceeded against for contempt of court.

NOTE: Sub. (2m) is repealed eff. 12–1–95 by 1993 Wis. Act 377.

(3) If it appears at a court hearing that any person 18 or older has violated s. 948.40, 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. 948.40 without the prior reference by the judge to the district attorney, as in other criminal cases.

History: 1977 c. 354, 449; 1987 a. 332 s. 64; 1989 a. 121; 1993 a. 118, 377.

Involuntary commitment was not authorized by this section. Contempt In Interest of J. S., 137 W (2d) 217, 404 NW (2d) 79 (Ct. App. 1987).

SUBCHAPTER X

REHEARING AND APPEAL

48.46 New evidence; relief from judgment terminating parental rights. (1) Except as provided in sub. (2), 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.

(2) A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion shall be filed within 40 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04 (7), in which case the motion shall be filed within the time permitted by s. 809.30 (2) (h). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. Motions under this subsection and appeals to the court of appeals shall be the exclusive remedies for such a parent to obtain a new hearing in a termination of parental rights proceeding.

History: 1977 c. 449; 1979 c. 300; 1987 a. 383; Sup. Ct. Order, 146 W (2d) xxxiii (1988).

Judicial Council Note, 1988: Sub. (2) limits the remedies for relief from a judgment or order terminating parental rights when the aggrieved party is a parent whose rights were terminated by consent or who has failed to contest the petition. The motion for relief from the judgment or order must be filed within 40 days after entry of the judgment or order terminating parental rights, unless the appellate process is timely initiated, in which case the motion must be filed within 60 days after service of the transcript. The court must grant a rehearing upon a prima facie showing of one or more of the following grounds: mistake, inadvertence, surprise or excusable neglect; newly discovered evidence justifying a new hearing under s. 805.15 (3); fraud, misrepresentation or other misconduct of an adverse party; the judgment or order is void; the judgment or order is based upon a prior judgment which has been reversed or otherwise vacated. [Re Order effective Jan. 1, 1989]

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.

SUBCHAPTER XI

AUTHORITY

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 departments, 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. A court may not direct the department to administer psychotropic medications to children who receive special treatment or care under this subsection.

(3m) To accept appointment by an American Indian tribal court in this state as guardian of a child for the purpose of making an adoptive placement for the child if all of the following conditions exist:

(a) The child does not have parents or a guardian or the parental rights to the child have been terminated by a tribal court in accordance with procedures that are substantially equivalent to the procedures specified in subch. VIII.

(b) The tribal court has transferred the guardianship or legal custody, or both, of the child to the department, if the child does not have parents or a guardian.

(c) The tribal court's judgment for termination of parental rights identifies the department as the agency that will receive guardianship or legal custody, or both, of the child upon termination, if the parental rights to the child have been terminated.

(d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485.

(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 or licensed treatment foster homes in accordance with s. 48.63 or licensed group homes, contracting for their care by licensed child welfare agencies or replacing them in juvenile correctional institutions in accordance with rules promulgated 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.

NOTE: Sub. (4) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(4) To provide appropriate care and training for children in its legal custody or under its supervision under s. 48.34 (4m) or (4n); including serving those children in their own homes, placing them in licensed foster homes or licensed treatment foster homes in accordance with s. 48.63 or licensed group homes, contracting for their care by licensed child welfare agencies or replacing them in juvenile correctional institutions in accordance with rules promulgated 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;

NOTE: Par. (b) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(b) Was in the legal custody of the department or under its supervision under s. 48.34 (4m) or (4n) when the person reached 18 years of age;

(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 the child's parents.

NOTE: Sub. (5) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(5) To provide for the moral and religious training of a child in its legal custody or under its supervision under s. 48.34 (4m) or (4n) according to the religious belief of the child or of the child's 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.

NOTE: Sub. (6) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(6) To consent to emergency surgery under the direction of a licensed physician or surgeon for any child in its legal custody or under its supervision under s. 48.34 (4m) or (4n) 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.

(8m) To enter into agreements with American Indian tribes in this state to implement the Indian child welfare act, 25 USC 1911 to 1963.

(9) To license foster homes or treatment foster homes as provided in s. 48.66 (1) for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county departments.

(9m) To license shelter care facilities as provided in s. 48.66 (1).

(10) To license child welfare agencies and day care centers as provided in s. 48.66 (1).

(11) When notified of the birth or expected birth of a child who is or is 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 (7) (dd).

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

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

(14) To pay maintenance, tuition and related expenses from the appropriations under s. 20.435 (3) (ho) and (7) (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 that age were in legal custody of the department as a result of a judicial decision.

NOTE: Sub. (14) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(14) To pay maintenance, tuition and related expenses from the appropriations under s. 20.435 (3) (ho) and (7) (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 that age were in the legal custody of the department or under its supervision under s. 48.34 (4m) or (4n) as a result of a judicial decision.

(15) To license group homes as provided in s. 48.625.

(16) To establish and enforce standards for services provided under ss. 48.34 and 48.345 (1) (a) and (e). This authority does not apply to services provided by the department of corrections under s. 48.366 (8).

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; 1985 a. 135, 176; 1985 a. 332 s. 251 (3); 1987 a. 339; 1989 a. 31, 107, 359; 1991 a. 316; 1993 a. 16, 375, 385, 446, 491.

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).

48.485 Transfer of tribal children to department for adoption. If the department accepts guardianship or legal custody or both from an American Indian tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive placement for the child. If a permanent adoptive placement is not in progress within 2 years after entry of the termination of parental rights order by the tribal court, the department may petition the tribal court to transfer legal custody or guardianship of the child back to the tribe.

History: 1989 a. 31.

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.

NOTE: This section is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

48.49 NOTIFICATION BY COURT OF PLACEMENT WITH DEPARTMENT; INFORMATION FOR DEPARTMENT. (1) When the court places a child in a secured correctional facility, 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 places a child in a secured correctional facility, 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 a child who has been placed in a secured correctional facility, including the information specified in sub. (2), within 5 working days of the request.

NOTE: Sub. (3) is repealed eff. 12–1–95 by 1993 Wis. Act 377 and subs. (1) and (2) are amended eff. 12–1–95 by 1993 Wis. Act 491 to read:

48.49 NOTIFICATION BY COURT OF TRANSFER TO DEPARTMENT OF CORRECTIONS OR OF PLACEMENT WITH DEPARTMENT OF HEALTH AND SOCIAL SERVICES; INFORMATION FOR THOSE DEPARTMENTS. (1) When the court places a child in a secured correctional facility under the supervision of the department of health and social services or transfers legal custody of a child to the department of corrections, the court shall immediately notify the department to which the child's legal custody is transferred or under whose supervision the child is placed of that action. The court shall, in accordance with procedures established by the department to which the child's legal custody is transferred or under whose supervision the child is placed, provide transportation for the child to a receiving center designated by that department or deliver the child to personnel of that department.

(2) When the court places a child in a secured correctional facility under the supervision of the department of health and social services or transfers legal custody of a child to the department of corrections, the court and all other public agencies shall also immediately transfer to the department to which the child's legal custody is transferred or under whose supervision the child is placed a copy of the report submitted to the court under s. 48.33 and all other pertinent data in their possession and shall immediately notify the child's last school district in writing of its obligation under s. 118.125 (4).

History: 1977 c. 449; 1979 c. 205; 1989 a. 31; 1991 a. 39; 1993 a. 377, 385, 491.

48.50 Examination of children in legal custody of department of health and social services. (1) The department shall examine every child 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 a child who has 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, any physical or mental examinations considered necessary and the evaluation under s. 48.533 (1) or (2) to determine whether the child is eligible for corrective sanctions supervision. A child who is examined under this subsection shall be screened to determine whether the child is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance.

NOTE: Sec. 48.50 (title) and sub. (1) are amended eff. 7–1–95 by 1993 Wis. Acts 385 and 491 to read:

48.50 EXAMINATION OF CHILDREN IN LEGAL CUSTODY OR UNDER SUPERVISION OF DEPARTMENT OF HEALTH AND SOCIAL SERVICES. (1) The department shall examine every child who is placed under its supervision under s. 48.34 (4m) or (4n) or 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 a child who has 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, any physical or mental examinations considered necessary to determine the type of placement that is necessary for the child and the evaluation under s. 48.533 (1) or (2) to determine whether the child is eligible for corrective sanctions supervision. A child who is examined under this subsection shall be screened to determine whether the child is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance.

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

History: 1977 c. 354; 1989 a. 31, 107; 1993 a. 16, 385, 446, 491.

48.505 Children placed in a secured correctional facility. The department shall have the right and duty to protect, train, discipline, treat and confine a child who is placed in a secured correctional facility under s. 48.34 (4m), 48.357 (4) or (5) (e) or 48.366, and to provide food, shelter, legal services, education and ordinary medical and dental care for the child, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

NOTE: This section is created eff. 7–1–95 by 1993 Wis. Act 385.

History: 1993 a. 385.

48.51 Notification by department of release of child from correctional custody. (1) At least 15 days prior to the date of release of a child from its legal custody or release of a child to an aftercare or corrective sanctions placement, the department shall:

NOTE: Sec. 48.51 (1) (intro.) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(1) (intro.) At least 15 days prior to the date of release of a child from a secured correctional facility, the department shall:

NOTE: Sec. 48.51 (title) and sub. (1) (intro.), as affected by 1993 Wis. Act 385, are amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

48.51 NOTIFICATION OF RELEASE OF CHILD FROM CORRECTIONAL CUSTODY. (1) (intro.) At least 15 days prior to the date of release of a child from a secured correctional facility or a placement in the community under the corrective sanctions program or the youthful offender program, the department of health and social services or the department of corrections shall:

(a) Notify all of the following local agencies in the community in which the child will reside of the child's return to the community:

1. The law enforcement agencies.

2. The school district.

3. The county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437.

(b) Notify any known victim of an act for which the child has been found delinquent of the child's release from departmental legal custody or release to an aftercare or corrective sanctions placement, if all of the following apply:

NOTE: Par. (b) (intro.) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(b) (intro.) Notify any known victim of an act for which the child has been found delinquent of the child's release to an aftercare or corrective sanctions placement, if all of the following apply:

NOTE: Par. (b) (intro.), as affected by 1993 Wis. Act 385, is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(b) (intro.) Notify any known victim of an act for which the child has been found delinquent of the child's release, if all of the following apply:

1. The commission of the act by the child is an act which, if committed by an adult, would have been punishable as a crime against another person.

2. The victim can be found.

3. The victim has sent in a request card under sub. (2).

(c) Notify, if the criteria in par. (b) are met, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian if the victim died as a result of the crime.

(2) The department shall design and prepare cards for victims specified in sub. (1) (b) and (c) to send to the department. The cards shall have space for these persons to provide their names and addresses and any other information that the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to victims specified in sub. (1) (b) and (c). These persons may send completed cards to the department.

(3) Timely release of a child shall not be prejudiced by the fact that the department did not notify the victims or the local agencies under sub. (1) within the 15 days.

History: 1989 a. 31, 107; 1993 a. 16, 377, 385, 491.

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:

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

(b) Foster homes or treatment 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; and

(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.

NOTE: Par. (a) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(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 or supervision under s. 48.34 (4m) or (4n) 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.

NOTE: Par. (c) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(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 or under its supervision under s. 48.34 (4m) or (4n) who have been placed in that facility.

(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; 1987 a. 332 s. 64; 1989 a. 31, 107; 1993 a. 385, 446.

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. Except as provided under s. 48.366, 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.

NOTE: This section is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

48.53 DURATION OF CONTROL OF DEPARTMENT OVER DELINQUENTS. Except as provided under s. 48.366, all children adjudged delinquent who have been placed under the supervision of the department under s. 48.34 (4m) or (4n) 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 supervision.

History: 1971 c. 213 s. 5; 1975 c. 39; 1979 c. 295; 1987 a. 27; 1993 a. 385.

48.532 Juvenile boot camp program. (1) PROGRAM. Beginning 1995, the department shall provide a juvenile boot camp program for children.

(2) PROGRAM ELIGIBILITY. The department may place in the juvenile boot camp program any child whose legal custody has been transferred to the department under s. 48.34 (4m) for placement in a secured correctional facility.

History: 1993 a. 98.

48.533 Corrective sanctions. (1) PILOT PROGRAM. From the appropriation under s. 20.435 (3) (a), the department shall provide $208,000 in fiscal year 1993–94 for a corrective sanctions pilot program to serve an average daily population of 20 children beginning on April 1, 1994. The juvenile offender review program in the division of youth services in the department shall evaluate and select for participation in the pilot program children who have been placed in a secured correctional facility under s. 48.34 (4m). The department shall place a pilot program participant in the community, provide intensive surveillance of that participant and provide an average of $5,000 per year per participant, prorated for the period of the pilot program, to purchase community–based treatment services for each participant. The department shall make the intensive surveillance required under this subsection available 24 hours a day, 7 days a week, and may purchase or provide electronic monitoring for the intensive surveillance of program participants.

(2) CORRECTIVE SANCTIONS PROGRAM. From the appropriation under s. 20.435 (3) (a), the department shall provide $433,500, and from the appropriation under s. 20.435 (3) (hr), the department shall provide $2,192,900, for a corrective sanctions program, beginning on July 1, 1994, to serve an average daily population of 105 children, or an average daily population of more than 105 children if the appropriation under s. 20.435 (3) (hr) is supplemented under s. 13.101 or 16.515 and the positions for the program are increased under s. 13.101 or 16.505 (2), in not less than 3 counties, including Milwaukee county. The juvenile offender review program in the division of youth services in the department shall evaluate and select for participation in the program children who have been placed in a secured correctional facility under s. 48.34 (4m). The department shall place a program participant in the community, provide intensive surveillance of that participant and provide an average of $5,000 per year per participant to purchase community–based treatment services for each participant. The department shall make the intensive surveillance required under this subsection available 24 hours a day, 7 days a week, and may purchase or provide electronic monitoring for the intensive surveillance of program participants. The department shall provide a report center in Milwaukee county to provide on–site programming after school and in the evening for children from Milwaukee county who are placed in the corrective sanctions program. A contact worker providing services under the program shall have a case load of approximately 10 children and, during the initial phase of placement in the community under the program of a child who is assigned to that contact worker, shall have not less than one face–to–face contact per day with that child. Case management services under the program shall be provided by a corrective sanctions agent who shall have a case load of approximately 15 children. The department shall promulgate rules to implement the program.

(3) INSTITUTIONAL STATUS. A participant in the pilot program under sub. (1) or the program under sub. (2) remains in the legal custody of the department, remains subject to the rules and discipline of that department and is considered to be in custody, as defined in s. 946.42 (1) (a). Notwithstanding ss. 48.19 to 48.21, if a child violates a condition of that child's participation in the pilot program under sub. (1) or the program under sub. (2) the department may, without a hearing, take the child into custody and return the child to placement in a secured correctional facility for up to 72 hours as a sanction for that violation. If the child is returned to a secured correctional facility, for longer than 72 hours, the child is entitled to a hearing under s. 48.357 (5). If a child runs away from the child's placement in the community while participating in the pilot program under sub. (1) or the program under sub. (2), that child is considered to have escaped in violation of s. 946.42 (3) (c).

NOTE: Sub. (3) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(3) INSTITUTIONAL STATUS. A participant in the pilot program under sub. (1) or the program under sub. (2) remains under the supervision of the department, remains subject to the rules and discipline of that department and is considered to be in custody, as defined in s. 946.42 (1) (a). Notwithstanding ss. 48.19 to 48.21, if a child violates a condition of that child's participation in the pilot program under sub. (1) or the program under sub. (2) the department may, without a hearing, take the child into custody and return the child to placement in a secured correctional facility for up to 72 hours as a sanction for that violation. If the child is returned to a secured correctional facility, for longer than 72 hours, the child is entitled to a hearing under s. 48.357 (5). If a child runs away from the child's placement in the community while participating in the pilot program under sub. (1) or the program under sub. (2), that child is considered to have escaped in violation of s. 946.42 (3) (c).

History: 1993 a. 16, 385, 437.

48.534 Intensive supervision program. (1) A county department may provide an intensive supervision program for children who have been adjudicated delinquent and ordered to participate in an intensive supervision program under s. 48.34 (2r). A county department that provides an intensive supervision program shall purchase or provide intensive surveillance and community–based treatment services for participants in that program and may purchase or provide electronic monitoring for the intensive surveillance of program participants. A caseworker providing services under an intensive supervision program may have a case load of no more than 10 children and shall have not less than one face–to–face contact per day with each child who is assigned to that caseworker. Notwithstanding ss. 48.19 to 48.21, if a child violates a condition of the child's participation in the program, the child's caseworker may, without a hearing, take the child into custody and place the child in a secure detention facility for not more

than 72 hours as a sanction for that violation, if at the dispositional hearing the court explained those conditions to the child and informed the child of the possibility of that sanction. If the child is held in a secure detention facility for longer than 72 hours, the child is entitled to a hearing under s. 48.21. The hearing shall be conducted in the manner provided in s. 48.21, except that the hearing shall be conducted within 72 hours, rather than 24 hours, after the time that the decision to hold the child was made and a written statement of the reasons for continuing to hold the child in custody may be filed rather than a petition under s. 48.25.

(2) The department shall promulgate rules specifying the requirements for an intensive supervision program under this section. The rules shall include rules that govern the use of placement in a secure detention facility for not more than 72 hours as a sanction for a violation of a condition of a child's participation in the program.

(3) From the appropriation under s. 20.435 (3) (bg), the department shall award $100,000 in fiscal year 1994–95 as grants to county departments to provide intensive supervision programs under this section.

History: 1993 a. 16, 98.

48.536 Intensive aftercare program. (1) PURPOSE. The purpose of the intensive aftercare program is to reduce the rate of recidivism of children who have been released from secured correctional facilities and child caring institutions by determining the types and levels of intensity of programs, services and supervision that are effective in reducing the rate of recidivism for children on aftercare.

(2) INTENSIVE AFTERCARE PROGRAM ESTABLISHMENT. The department shall conduct an intensive aftercare program for children who have been adjudicated delinquent and placed in a secured correctional facility under s. 48.34 (4m) or a child caring institution and who have been released on aftercare from either of those placements.

(3) SELECTION OF GRANT RECIPIENTS. (a) From the appropriation under s. 20.435 (3) (au), the department shall award grants to counties that are selected to participate in the intensive aftercare program. The department may award grants to single counties or to counties that apply jointly to operate a single intensive aftercare program. The applications shall be submitted by, and the grants shall be awarded to, the county department in each county that administers community youth and family aids under s. 46.26. In awarding grants under this paragraph, the department shall give preference to counties that operated intensive aftercare pilot programs under s. 48.535, 1991 stats., on January 1, 1993. No county may receive a grant or grants under this paragraph totaling more than $75,000 in any year.

(b) The department shall select intensive aftercare program grant recipients based on applications submitted to the department. Applications and selection shall be in accordance with the request–for–proposal procedures established by the department. Each application shall do all of the following:

1. Identify the applicant's goals relating to recidivism for children participating in the intensive aftercare program.

2. Assure that the aftercare services available to the participants will include school tutoring and other educational services; vocational training and counseling; alcohol and other drug abuse outpatient treatment and education; family counseling; employment services; recreational opportunities; and assistance with independent–living arrangements.

3. Identify the manner in which the participants who are in need of various aftercare services will obtain or have access to those services.

4. If par. (c) 2. applies, identify the method for random selection of the intensive aftercare program participants. The random selection of participants shall operate to ensure that the intensive aftercare program participants are as representative as possible of the characteristics of the total population of children on aftercare in the geographic area designated under par. (c) 2.

5. Include proof that the applicant is able to provide matching funds for the applicant's program under this section from sources other than a grant awarded under par. (a) equal to 25% of the amount awarded under par. (a).

(c) 1. Except if subd. 2. applies, the application shall ensure that the intensive aftercare program will be provided to each child who is eligible under sub. (4) for the intensive aftercare program in the county or counties that the applicant or joint applicants represent.

2. If an applicant is a single county with a population of 500,000 or more, the application may specify a particular geographic area within the county in which the intensive aftercare program will be administered. The application shall ensure that the intensive aftercare program will be provided to each child who is in the geographic area and eligible under sub. (4) and who meets the random selection criteria established under par. (b) 4.

(4) ELIGIBILITY. A child who resides in a county that receives a grant to administer an intensive aftercare program is eligible for the intensive aftercare program if any of the following applies:

(a) The child is placed in a secured correctional facility or child caring institution as a result of an adjudication of delinquency under s. 48.34 during the time in which the intensive aftercare program is administered.

(b) The child is released from a secured correctional facility or child caring institution on aftercare during the time in which the intensive aftercare program is being administered.

(5) COMPONENTS OF INTENSIVE AFTERCARE PROGRAM. Each grant recipient shall ensure that the intensive aftercare program will include all of the following components:

(a) That participants in the intensive aftercare program will receive not less than one supervisory contact per day, for the first 60 days of participation in the program, with a person designated to provide aftercare services and that, after 60 days of participation in the program, participants may receive less than one supervisory contact per day if all of the participant's aftercare services providers agree that a reduced level of supervisory contact is appropriate.

(b) That, if a child participating in the intensive aftercare program enters a secured correctional facility or a child caring institution as a result of an adjudication of delinquency under s. 48.34, the grant recipient will designate a case manager for that child. For any child who meets the criteria under sub. (4) (b), a case manager will be appointed at the earliest possible opportunity prior to the child's release. The case manager shall act as a liaison between the secured correctional facility or child caring institution and the intensive aftercare program and develop an intensive aftercare plan to be implemented upon the child's release from the secured correctional facility or child caring institution. The plan shall specify the number of contacts that the child shall receive under the intensive aftercare program, the programs and services to be provided to the child while on intensive aftercare, the planning and treatment goals of the child's participation in the intensive aftercare program and the estimated length of time that the child will participate in the intensive aftercare program. The plan shall be developed in consultation with representatives of the division of youth services in the department.

(c) That intensive aftercare will be provided to each child participating in the intensive aftercare program for a period of not less than 90 days from the date on which the child is released from the secured correctional facility or child caring institution. The participant may receive intensive aftercare programming and services after this minimum period if necessary to ensure that planning and treatment goals for the child are met.

(d) That the programs and services specified in sub. (3) (b) 2. will be provided, or made available, to an intensive aftercare program participant in accordance with the aftercare plan and the participant's needs. Grant recipients may provide these programs and services directly or through a public or private provider under contract with the grant recipient.

(6) MINIMUM QUALIFICATIONS OF PROVIDERS. (a) A case manager providing services under sub. (5) (b) shall have at least a bachelor's degree and 2 years of experience in working with delinquent children, as specified by the department, or a master's degree.

(b) Persons engaging in the supervisory contacts under sub. (5) (a) shall have at least a bachelor's degree or a minimum of 2 years of experience in working with delinquent children, as specified by the department, or both.

History: 1993 a. 98.

48.537 Youthful offender program. (1) DEFINITION. In this section, "department" means the department of corrections.

(2) PROGRAM ADMINISTRATION AND DESIGN. The department shall administer a youthful offender program for children who have been adjudicated delinquent and ordered to participate in the program under s. 48.34 (4g). The department shall design the program to provide all of the following:

(a) Supervision, care and rehabilitation that is less costly than ordinary placement in a secured correctional facility under s. 48.34 (4m) and more restrictive than ordinary supervision in the community.

(b) Component phases that are intensive and highly structured.

(c) A series of component phases for each participant that is based on public safety considerations and the participant's need for supervision, care and rehabilitation.

(3) COMPONENT PHASES. (a) The department shall provide each participant with one or more of the following sanctions:

1. Subject to subd. 1m., placement in a secured correctional facility or, if the participant is 18 years of age or over, a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years.

1m. If the participant has been adjudicated delinquent for committing an act that would be a Class A felony if committed by an adult, placement in a secured correctional facility or, if the participant is 18 years of age or over, a Type 1 prison, as defined in s. 301.01 (5), until the participant reaches 25 years of age, unless the participant is released sooner, subject to a mandatory minimum period of confinement of not less than one year.

2. Intensive or other field supervision.

3. Electronic monitoring.

4. Alcohol or other drug abuse outpatient treatment and services.

5. Mental health treatment and services.

6. Community service.

7. Restitution.

8. Transitional services for education and employment.

9. Other programs as prescribed by the department.

(b) The department may provide the sanctions under par. (a) in any order, may provide more than one sanction at a time and may return to a sanction that was used previously for a participant. Notwithstanding ss. 48.357 and 48.363, a participant is not entitled to a hearing regarding the department's exercise of authority under this subsection unless the department provides for a hearing by rule.

(4) INSTITUTIONAL STATUS. A participant in the youthful offender program is in the legal custody and under the control of the department and is subject to the rules and discipline of the department. Notwithstanding ss. 48.19 to 48.21, if a participant violates a condition of his or her participation in the program under sub. (3) (a) 2. to 9. the department may, without a hearing, take the participant into custody and return him or her to placement in a secured correctional facility or, if the participant is 18 years of age or over, a Type 1 prison, as defined in s. 301.01 (5). Any intentional failure of a participant to remain within the extended limits of his or her placement while participating in the youthful offender program or to return within the time prescribed by the administrator of the division of intensive sanctions in the department is considered an escape under s. 946.42 (3) (c).

(5) TRANSFERS AND DISCHARGE. (a) The parole commission may grant a participant parole under s. 304.06 at any time after the participant has completed 2 years of participation in the youthful offender program. Parole supervision of the participant shall be provided by the department.

(b) The department may discharge a participant from participation in the youthful offender program and from departmental custody and control at any time after the participant has completed 3 years of participation in the youthful offender program.

(c) Sections 48.357 and 48.363 do not apply to changes of placement and revisions of orders for a child who is a participant in the youthful offender program.

(dm) The department of corrections may not transfer legal custody and control over a participant in the youthful offender program to the department of health and social services.

(6) PURCHASE OF SERVICES. The department of corrections may contract with the department of health and social services, a county department or any public or private agency for the purchase of goods, care and services for participants in the youthful offender program. The department of corrections shall reimburse a person from whom it purchases goods, care or services under this subsection from the appropriation under s. 20.410 (1) (am).

(6m) MINORITY HIRING. (a) In this subsection:

1. "American Indian" means a person who is enrolled as a member of a federally recognized American Indian tribe or band or who possesses documentation of at least one–fourth American Indian ancestry or documentation of tribal recognition as an American Indian.

2. "Black" means a person whose ancestors originated in any of the black racial groups of Africa.

3. "Hispanic" means a person of any race whose ancestors originated in Mexico, Puerto Rico, Cuba, Central America or South America or whose culture or origin is Spanish.

4. "Minority group member" means a Black, a Hispanic or an American Indian.

(b) In the selection of classified service employes for a secured correctional facility operated by the department for the placement of program participants under this section, the appointing authority shall make every effort to use the expanded certification program under s. 230.25 (1n) or rules of the administrator of the division of merit recruitment and selection in the department of employment relations to ensure that the percentage of employes who are minority group members approximates the percentage of the children placed at that secured correctional facility who are minority group members. The administrator of the division of merit recruitment and selection in the department of employment relations shall provide guidelines for the administration of this selection procedure.

(7) RULES. The department shall promulgate rules to implement this section.

NOTE: This section is created eff. 12–1–95 by 1993 Wis. Act 377.

History: 1993 a. 377.

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.

NOTE: This section is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

48.54 RECORDS. The department shall keep a complete record on each child in its legal custody or under its supervision under s. 48.34 (4m) or (4n). 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 place-

ments of the child while in the legal custody or under the supervision of the department.

History: 1977 c. 449; 1993 a. 385.

48.547 Juvenile alcohol and other drug abuse pilot program. (1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by children is a state responsibility of statewide dimension. The legislature recognizes that there is a lack of adequate procedures to screen, assess and treat children for alcohol and other drug abuse. To reduce the incidence of alcohol and other drug abuse by children, the legislature deems it necessary to experiment with solutions to the problems of the use and abuse of alcohol and other drugs by children by establishing a juvenile alcohol and other drug abuse pilot program in a limited number of counties. The purpose of the program is to develop intake and court procedures that screen, assess and give new dispositional alternatives for children with needs and problems related to the use of alcohol beverages or controlled substances who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter in the pilot counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.435 (7) (mb) that is available for the pilot program, the department shall select counties to participate in the pilot program. Unless a county department of human services has been established under s. 46.23 in the county that is seeking to implement a pilot program, the application submitted to the department shall be a joint application by the county department that provides social services and the county department established under s. 51.42 or 51.437. The department shall select counties in accordance with the request for proposal procedures established by the department. The department shall give a preference to county applications that include a plan for case management. The counties selected shall begin the pilot program on January 1, 1989.

(3) MULTIDISCIPLINARY SCREEN. By September 1, 1988, the department shall develop a multidisciplinary screen for the pilot program. The screen shall be used by an intake worker to determine whether or not a child is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen children for:

(a) Family dysfunction.

(b) School or truancy problems.

(c) Mental health problems.

(d) Delinquent behavior patterns.

(4) ASSESSMENT CRITERIA. By September 1, 1988, the department shall develop uniform alcohol and other drug abuse assessment criteria to be used in the pilot program under ss. 48.245 (2) (a) 3., 48.295 (1), 48.32 (1g), 48.343 (10) and 48.344 (2g). An approved treatment facility that assesses a person under ss. 48.245 (2) (a) 3., 48.295 (1), 48.32 (1g), 48.343 (10) and 48.344 (2g) may not also provide the person with treatment unless the department permits the approved treatment facility to do both in accordance with the criteria established by rule by the department.

History: 1987 a. 339; 1989 a. 31; 1993 a. 213.

48.548 Multidisciplinary screen and assessment criteria. The department shall make the multidisciplinary screen developed under s. 48.547 (3) and the assessment criteria developed under s. 48.547 (4) available to all counties.

History: 1987 a. 339.

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.

48.551 State adoption center. (1) The department shall establish a state adoption center for the purposes of increasing public knowledge of adoption and promoting to adolescents and pregnant women the availability of adoption services. From the appropriation under s. 20.435 (6) (dg), the department may contract with individuals and private agencies to operate the adoption center.

(2) The department shall promulgate rules specifying the functions of the state adoption center, which shall include:

(a) Training persons who provide counseling to adolescents including school counselors, county employes providing child welfare services under s. 48.56 and family planning clinic employes.

(b) Seeking persons to undergo training.

(c) Operating a toll–free telephone number to provide information and referral services.

(d) Distributing pamphlets which provide information on the availability of adoption services.

(e) Promoting adoption through the communications media.

History: 1985 a. 56, 176; 1989 a. 31 ss. 1283, 1284; Stats. 1989 s. 48.551.

SUBCHAPTER XII

COUNTY CHILD WELFARE SERVICES

48.56 County child welfare services. (1) Each county shall provide child welfare services through its county department.

(2) Each county department shall employ personnel who devote all or part of their time to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

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

History: 1975 c. 307; 1977 c. 271; 1985 a. 176; 1991 a. 160.

48.57 Powers and duties of county departments providing child welfare services. (1) Each county department 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 of supervisors 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, the county department shall offer social services to the caretaker of any child who is referred to it under 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. A court may not order a county department to administer psychotropic medications to children who receive special treatment or care under this paragraph.

(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, licensed treatment 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 department shall not purchase the educational component of private day treatment programs unless the county 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 county department 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 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 a county department in a county with a population of less than 500,000 and 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 or treatment foster homes in accordance with s. 48.75.

(j) To use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

(2) In performing the functions specified in sub. (1) the county department may avail itself of the cooperation 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, treatment 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.

(4) A county department may provide aftercare supervision under s. 48.34 (4n) for children who are released from secured correctional facilities. If a county department intends to change its policy regarding whether the county department or the department shall provide aftercare supervision for children released from secured correctional facilities, the county executive or county administrator, or, if the county has no county executive or county administrator, the chairperson of the county board of supervisors, or, for multicounty departments, the chairpersons of the county boards of supervisors jointly, shall submit a letter to the department stating that intent before July 1 of the year preceding the year in which the policy change will take effect.

NOTE: Sub. (4) is created eff. 7–1–95 by 1993 Wis. Act 385.

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; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491.

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 referred by the county department, if the delinquent children are placed in separate facilities;

(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; 1985 a. 176.

48.59 Examination and records. (1) The county department 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 department shall screen a child who is examined under this subsection to determine whether the child is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance. The county department 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.

NOTE: Sub. (1) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(1) The county department shall investigate the personal and family history and environment of any child transferred to its legal custody or placed under its supervision under s. 48.34 (4n) and make any physical or mental examinations of the child considered necessary to determine the type of care necessary for the child. The county department shall screen a child who is examined under this subsection to determine whether the child is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance. The county department 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 or under the supervision of the county department.

(2) At the department's request, the county department shall report to the department regarding children in the legal custody or under the supervision of the county department.

History: 1977 c. 449; 1985 a. 176; 1993 a. 385, 446, 491.

See note to 19.21, citing 70 Atty. Gen. 196.

48.595 Duration of control of county departments over delinquents. Except as provided in s. 48.366, a child who has been adjudged delinquent and placed under the supervision of a county department under s. 48.34 (4n) shall be discharged as soon as the county 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 county department retain supervision.

NOTE: This section is created eff. 7–1–95 by 1993 Wis. Act 385.

History: 1993 a. 385.

SUBCHAPTER XIII

CHILD WELFARE AGENCIES

48.599 Definitions. In this subchapter:

(1) "Physical restraint" includes all of the following:

(a) A locked room.

(b) A device or garment that interferes with a child's freedom of movement and that the child is unable to remove easily.

(c) Restraint by a child welfare agency staff member of a child by use of physical force.

(2) "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

History: 1989 a. 336.

48.60 Child welfare agencies licensed. (1) No person may 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 that person obtains a license to operate a child welfare agency from the department. To obtain a license under this subsection to operate a child welfare agency, a person must meet the minimum requirements for a license established by the department under s. 48.67 and pay the applicable license fee under s. 48.615 (1) (a) or (b). A license issued under this subsection is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

(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 or a licensed treatment 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 may not make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for the additional placement resources.

(4) (a) In this subsection, "child with exceptional educational needs" has the meaning given in s. 115.76 (3).

(b) Notwithstanding ss. 115.85 (2), 121.78 (3) (a) and 121.79 (1) (a), a child welfare agency shall pay for the costs incurred by a school district in providing education and related services to a child with exceptional educational needs who is a resident of the child welfare agency, if the child was placed in the child welfare agency pursuant to the interstate compact on the placement of children under s. 48.988.

(5) (a) No later than 24 hours after the death of a child who resided in a building operated by a child welfare agency, the child welfare agency shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication for the child.

3. There is reasonable cause to believe that the death was a suicide.

(c) No later than 14 days after the date of the death reported under par. (a), the department shall investigate the death.

History: 1973 c. 90; 1975 c. 39; 1979 c. 300; 1989 a. 31, 107, 336; 1991 a. 39; 1993 a. 446.

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, licensed treatment 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 the child's 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 or treatment 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; 1991 a. 316; 1993 a. 446.

48.615 Child welfare agency licensing fees. (1) (a) Before the department may issue a license under s. 48.60 (1) to a child welfare agency that regularly provides care and maintenance for children within the confines of its building, the child welfare agency must pay to the department a biennial fee of $75, plus a biennial fee of $10 per child, based on the number of children that the child welfare agency is licensed to serve.

(b) Before the department may issue a license under s. 48.60 (1) to a child welfare agency that places children in licensed foster homes, licensed treatment foster homes and licensed group homes, the child welfare agency must pay to the department a biennial fee of $200.

(c) A child welfare agency that wishes to renew a license issued under s. 48.60 (1) shall pay the applicable fee under par. (a) or (b) by the renewal date of the license.

(d) A new child welfare agency shall pay the applicable fee under par. (a) or (b) no later than 30 days before the opening of the child welfare agency.

(2) A child welfare agency that wishes to renew a license issued under s. 48.60 (1) and that fails to pay the applicable fee under sub. (1) (a) or (b) by the renewal date of the license or a new child welfare agency that fails to pay the applicable fee under sub. (1) (a) or (b) by 30 days before the opening of the child welfare agency shall pay an additional fee of $5 per day for every day after the deadline that the agency fails to pay the fee.

History: 1991 a. 39; 1993 a. 446.

SUBCHAPTER XIV

FOSTER HOMES AND TREATMENT FOSTER HOMES

48.62 Licensing of foster homes and treatment foster homes; rates. (1) (a) Any person who receives, with or without transfer of legal custody, 4 or fewer children or more than 4 children if all of the children are siblings to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75.

(b) Any person who receives, with or without transfer of legal custody, 4 or fewer children into a home to provide care and maintenance and structured, professional treatment for those children shall obtain a license to operate a treatment foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75.

(2) A relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) or a guardian of a child, who provides care and maintenance for a child, is not required to obtain the license specified in this section. The department, county department or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home or a treatment foster home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster home or treatment 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. The department, a county department or a licensed child welfare agency may, at the request of a guardian appointed under ch. 880, license the guardian's home as a foster home or treatment foster

home for the guardian's minor ward who is living in the home and who is placed in the home by court order. Relatives with no duty of support and guardians appointed under ch. 880 who are licensed to operate foster homes or treatment foster homes are subject to the department's licensing rules.

(3) When the department, a county department or a child welfare agency issues a license to operate a foster home, the department, county department or child welfare agency shall notify the clerk of the school district in which the foster home is located that a foster home has been licensed in the school district.

(4) Monthly payments in foster care shall be provided according to the age–related rates specified in this subsection. Beginning on January 1, 1993, the age–related rates are: $240 for children aged 4 and under; $267 for children aged 5 to 11; $327 for children aged 12 to 14 and $337 for children aged 15 to 17. Beginning on January 1, 1994, the age–related rates are: $276 for children aged 4 and under; $301 for children aged 5 to 11; $344 for children aged 12 to 14; and $361 for children aged 15 to 17. Beginning on January 1, 1995, the age–related rates are: $282 for children aged 4 and under; $307 for children aged 5 to 11; $349 for children aged 12 to 14; and $365 for children aged 15 to 17. In addition to these grants for basic maintenance, the department shall make supplemental payments for special needs, exceptional circumstances, care in a treatment foster home and initial clothing allowances according to rules promulgated by the department.

History: 1977 c. 354 s. 101; 1977 c. 418, 447; 1981 c. 20; 1985 a. 29 s. 3202 (23); 1985 a. 176, 281, 332, 403; 1989 a. 31, 336; 1993 a. 395 ss. 31m, 39; 1993 a. 437 s. 67; 1993 a. 446 ss. 79 to 82, 134m; 1993 a. 491.

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 department 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; fees. (1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the minimum requirements for a license established by the department under s. 48.67 and pay the license fee under sub. (2). A license issued under this subsection is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

(2) (a) Before the department may issue a license under sub. (1) to a group home, the group home must pay to the department a biennial fee of $75, plus a biennial fee of $10 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to renew a license issued under sub. (1) shall pay the fee under this paragraph by the renewal date of the license. A new group home shall pay the fee under this paragraph no later than 30 days before the opening of the group home.

(b) A group home that wishes to renew a license issued under sub. (1) and that fails to pay the fee under par. (a) by the renewal date of the license or a new group home that fails to pay the fee under par. (a) by 30 days before the opening of the group home shall pay an additional fee of $5 per day for every day after the deadline that the group home fails to pay the fee.

(2m) When the department issues a license to operate a group home, the department shall notify the clerk of the school district in which the group home is located that a group home has been licensed in the school district.

(3) This section does not apply to a foster home licensed under s. 48.62 (1) (a) in which care and maintenance is provided for more than 4 siblings.

History: 1977 c. 418; 1985 a. 281; 1991 a. 39; 1993 a. 395, 446.

Cross–reference: See s. 48.66 for the department's licensing authority.

48.627 Foster, treatment foster and family–operated group home parent insurance and liability. (1) In this section, "family–operated group home" means a home licensed under s. 48.625 for which the licensee is one or more individuals who operate not more than one group home.

(2) (a) Before the department, a county department or a licensed child welfare agency may issue or renew a foster home, treatment foster home or family–operated group home license, the licensing agency shall require the applicant to furnish proof satisfactory to the licensing agency that he or she has homeowner's or renter's liability insurance that provides coverage for negligent acts or omissions by children placed in a foster home, treatment foster home or family–operated group home that result in bodily injury or property damage to 3rd parties.

(b) A licensing agency may, in accordance with rules promulgated by the department, waive the requirement under par. (a) if the applicant shows that he or she is unable to obtain the required insurance, that he or she has had a homeowner's or renter's liability insurance policy canceled or that payment of the premium for the required insurance would cause undue financial hardship.

(c) The department shall conduct a study to determine the cost–effectiveness of purchasing insurance to provide standard homeowner's or renter's liability insurance coverage for applicants who are granted a waiver under par. (b). If the department determines that it would be cost–effective to purchase such insurance, it may purchase the insurance from the appropriations under s. 20.435 (6) (cf) and (7) (pd).

(d) The licensing agency shall specify the amounts of liability insurance coverage required under par. (a).

(2c) The department shall determine the cost–effectiveness of purchasing private insurance that would provide coverage to foster, treatment foster and family–operated group home parents for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family–operated group home. If this private insurance is cost–effective and available, the department shall purchase the insurance from the appropriations under s. 20.435 (6) (cf) and (7) (pd). If the insurance is unavailable, payment of claims for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family–operated group home shall be in accordance with subs. (2m) to (3).

(2m) Within the limits of the appropriations under s. 20.435 (6) (cf) and (7) (pd), the department shall pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for bodily injury or property damage sustained by a licensed foster, treatment foster or family–operated group home parent or a member of the foster, treatment foster or family–operated group home parent's family as a result of the act of a child in the foster, treatment foster or family–operated group home parent's care.

(2s) Within the limits of the appropriations under s. 20.435 (6) (cf) and (7) (pd), the department may pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for all of the following:

(a) Acts or omissions of the foster, treatment foster or family–operated group home parent that result in bodily injury to the child who is placed in the foster home, treatment foster home or family–operated group home or that form the basis for a civil action for damages by the foster child's parent against the foster, treatment foster or family–operated group home parent.

(b) Bodily injury or property damage caused by an act or omission of a child who is placed in the foster, treatment foster or family–operated group home parent's care for which the foster, treatment foster or family–operated group home parent becomes legally liable.

(3) (b) A claim under sub. (2m) shall be submitted to the department within 90 days after the bodily injury or property damage occurs. A claim under sub. (2s) shall be submitted within 90 days after a foster, treatment foster or family–operated group

home parent learns that a legal action has been commenced against that parent. No claim may be paid under this subsection unless it is submitted within the time limits specified in this paragraph.

(c) The department shall review and approve in whole or in part or disapprove all claims received under this subsection during each 3–month period beginning with the period from July 1, 1985, to September 30, 1985.

(d) No claim may be approved in an amount exceeding the total amount available for paying claims under this subsection in the fiscal year during which the claim is submitted. No claim for property damage sustained by a foster, treatment foster or family–operated group home parent or a member of a foster, treatment foster or family–operated group home parent's family may be approved in an amount exceeding $250,000.

(e) The department may not approve a claim unless the foster, treatment foster or family–operated group home parent submits with the claim evidence that is satisfactory to the department of the cause and value of the claim and evidence that insurance coverage is unavailable or inadequate to cover the claim. If insurance is available but inadequate, the department may approve a claim only for the amount of the value of the claim that it determines is in excess of the amount covered by insurance.

(f) If the total amount of the claims approved during any calendar quarter exceeds 25% of the total funds available during the fiscal year for purposes of this subsection plus any unencumbered funds remaining from the previous quarter, the department shall prorate the available funds among the claimants with approved claims. The department shall also prorate any unencumbered funds remaining in the appropriation under s. 20.435 (6) (cf) at the end of each fiscal year among the claimants whose claims were prorated during the fiscal year. Payment of a prorated amount from unencumbered funds remaining at the end of the fiscal year constitutes a complete payment of the claim for purposes of this program, but does not prohibit a foster parent or treatment foster parent from submitting a claim under s. 16.007 for the unpaid portion.

(g) A claimant whose claim is denied or whose payment is prorated is not entitled to a hearing under ch. 227 on the issue of the denial or proration.

(h) If a claim by a foster, treatment foster or family–operated group home parent or a member of the foster, treatment foster or family–operated group home parent's family is approved, the department shall deduct from the amount approved $200 less any amount deducted by an insurance company from a payment for the same claim, except that a foster, treatment foster or family–operated group home parent and his or her family are subject to only one deductible for all claims filed in a fiscal year.

(i) The department may enter into a contract for the administration of this subsection.

(4) Except as provided in s. 895.485, the department is not liable for any act or omission by or affecting a child who is placed in a foster home, treatment foster home or family–operated group home, but shall, as provided in this section, pay claims described under sub. (2m) and may pay claims described under sub. (2s) or may purchase insurance to cover such claims as provided for under sub. (2c), within the limits of the appropriations under s. 20.435 (6) (cf) and (7) (pd).

(5) The attorney general may represent a foster, treatment foster or family–operated group home parent in any civil action arising out of an act or omission of the foster, treatment foster or family–operated group home parent while acting in his or her capacity as a foster, treatment foster or family–operated group home parent.

History: 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 24, 29, 106, 154, 332, 336; 1987 a. 27, 377; 1989 a. 31; 1993 a. 446.

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 department or a child welfare agency licensed to place children in foster homes or treatment foster homes may place a child or negotiate or act as intermediary for the placement of a child in a foster home, treatment foster home or group home. Voluntary agreements under this subsection may not be used for placements in facilities other than foster, treatment foster or group homes and may not be extended. A foster home or treatment 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 may 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 or treatment foster home under sub. (1). If the child is living in a foster home or treatment 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, the agency shall prepare a revised permanency plan and file that revised plan 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; 1985 a. 176; 1989 a. 31, 107; 1993 a. 446.

48.64 Placement of children in foster homes, treatment foster homes and group homes. (1) DEFINITION. In this section, "agency" means the department, a county department or a licensed child welfare agency authorized to place children in foster homes or treatment foster homes.

(1m) FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME AGREEMENTS. If an agency places a child in a foster home or treatment foster home under a court order or voluntary agreement under s. 48.63, the agency 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, treatment foster home or group home for 6 months or more, the 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 after 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 an agency removes a child 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.

(1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a school–age child in a foster home or a group home, the agency shall notify the clerk of the school district in which the foster home or group home is located that a school–age child has been placed in a foster home or group home in the school district.

(2) SUPERVISION OF FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME PLACEMENTS. Every child in a foster home, treatment foster home or group home shall be under the supervision of an agency.

(4) ORDERS AFFECTING THE HEAD OF A HOME OR THE CHILDREN. (a) Any decision or order issued by an agency that affects the head of a foster, treatment foster or group home or the children involved may be appealed to the department under fair hearing procedures established under department rules. The department shall, upon receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department or child welfare agency that issued the decision or order. Each person receiving notice is 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 (2) (a), 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. The department shall grant a continuance for a reasonable period of time 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. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an agency action being appealed may participate in the final administrative decision on that 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 and to the departmental subunit, county department or child welfare agency that issued the decision or order. 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 placed has jurisdiction upon petition of any interested party over a child who is placed in a foster home, treatment 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 that agency involving the placement and care of the child. If the child has been placed in a foster home, the foster parent may present relevant evidence at the hearing. 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; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491.

Foster parents' rights were violated by department's failure to give mandatory written notice under (1), 1983 stats. [now (1m)] 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.

Foster parent is entitled to hearing under (4) (a) regarding interest as foster parent even where placement of child cannot be affected by hearing outcome. Bingenheimer v. DHSS, 129 W (2d) 100, 383 NW (2d) 898.

Sub. (4) (a) requires hearing where adoption agency removes child from adoptive placement within 6 months. Thelen v. DHSS, 143 W (2d) 574, 422 NW (2d) 146 (Ct. App. 1988).

While prospective adoptive parents have limited protected liberty interest in family unit during first six months of placement, interest does not require pre–removal hearing. Thelen v. Catholic Social Services, 691 F Supp. 1179 (E.D. Wis. 1988).

Family liberty interest of foster parents. 1978 WLR 510.

SUBCHAPTER XV

DAY CARE PROVIDERS

48.65 Day care centers licensed; fees. (1) No person may for compensation provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day unless that person obtains a license to operate a day care center from the department. To obtain a license under this subsection to operate a day care center, a person must meet the minimum requirements for a license established by the department under s. 48.67 and pay the license fee under sub. (3). A license issued under this subsection is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

(2) This section does not include any of the following:

(a) A relative or guardian of a child who provides care and supervision for the child.

(b) A public or parochial school.

(c) A person employed to come to the home of the child's parent or guardian for less than 24 hours a day.

(d) A county, city, village, town, school district or library that provides programs primarily intended for recreational or social purposes.

(3) (a) Before the department may issue a license under sub. (1) to a day care center that provides care and supervision for 4 to 8 children, the day care center must pay to the department a biennial fee of $50. Before the department may issue a license under sub. (1) to a day care center that provides care and supervision for 9 or more children, the day care center must pay to the department a biennial fee of $25, plus a biennial fee of $5 per child, based on the number of children that the day care center is licensed to serve. A day care center that wishes to renew a license issued under sub. (1) shall pay the applicable fee under this paragraph by the renewal date of the license. A new day care center shall pay the applicable fee under this paragraph no later than 30 days before the opening of the day care center.

(b) A day care center that wishes to renew a license issued under par. (a) and that fails to pay the applicable fee under par. (a) by the renewal date of the license or a new day care center that fails to pay the applicable fee under par. (a) by 30 days before the opening of the day care center shall pay an additional fee of $5 per day for every day after the deadline that the group home fails to pay the fee.

History: 1983 a. 193; 1985 a. 29; 1987 a. 399; 1991 a. 39.

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 department 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; 1985 a. 176.

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.

48.655 Parental access. A day care provider that holds a license under s. 48.65, that is certified under s. 48.651, that holds a probationary license under s. 48.69 or that is established or con-

tracted for under s. 120.13 (14) shall permit any parent or guardian of a child enrolled in the program to visit and observe the program of child care at any time during the provider's hours of operation, unless the visit or observation is contrary to an existing court order.

History: 1991 a. 275; 1993 a. 16.

48.656 Parent's right to know. Every parent, guardian or legal custodian of a child who is receiving care and supervision, or of a child who is a prospective recipient of care and supervision, from a day care center that holds a license under s. 48.65 (1) or a probationary license under s. 48.69 and that provides care and supervision for 9 or more children has the right to know certain information about the day care center that would aid the parent, guardian or legal custodian in assessing the quality of care and supervision provided by the day care center.

History: 1991 a. 275; 1993 a. 213, 375.

48.657 Day care center reports. (1) The department shall provide each day care center that holds a license under s. 48.65 (1) or a probationary license under s. 48.69 and that provides care and supervision for 9 or more children with an annual report that includes the following information:

(a) Violations of statutes, rules promulgated by the department under s. 48.67 or provisions of licensure under s. 48.70 (1) by the day care center. In providing information under this paragraph, the department may not disclose the identity of any employe of the day care center.

(b) A telephone number at the department that a person may call to complain of any alleged violation of a statute, rule promulgated by the department under s. 48.67 or provision of licensure under s. 48.70 (1) by the day care center.

(c) The results of the most recent inspection of the day care center under s. 48.73.

(2) A day care center shall post the report under sub. (1) next to the day care center's license or probationary license in a place where the report and the inspection results can be seen by parents, guardians or legal custodians during the day care center's hours of operation.

(2g) If the report under sub. (1) indicates that the day care center is in violation of a statute, a rule promulgated by the department under s. 48.67 or a provision of licensure under s. 48.70 (1), the day care center shall post with the report any notices received from the department relating to that violation.

(2r) Each day care center that receives a report under sub. (1) shall make available to a parent, guardian or legal custodian of a child who is receiving, or who is a prospective recipient of, care and supervision from the day care center the reports under sub. (1) from the previous 2 years and any notices received from the department relating to any violations identified in those reports. In providing information under this subsection, a day care center may withhold any information that would disclose the identity of an employe of the day care center.

(3) The department may require a day care center to provide to the department any information that is necessary for the department to prepare the report under sub. (1).

History: 1991 a. 275; 1993 a. 16, 375.

SUBCHAPTER XVI

LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, TREAMENT FOSTER HOMES, GROUP HOMES, DAY CARE CENTERS AND COUNTY DEPARTMENTS

48.66 Licensing duties of the department. (1) 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 or treatment foster homes, as provided by s. 48.62, and may license and supervise county departments in accordance with the procedures specified in this section and in ss. 48.67 to 48.74. The department may license a child welfare agency to hold in secure custody children who have been adjudicated delinquent under s. 48.34 (4m) and referred to the child welfare agency by the department under the intensive residential aftercare pilot program under 1993 Wisconsin Act 377, section 9126 (3x), and to provide supervision, care and maintenance for those children.

(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.

(4) 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.

(5) Licenses issued by the department under sub. (1) may be for any term not to exceed 2 years from the date of issuance. No license is transferable.

History: 1975 c. 307; 1977 c. 29, 271, 418, 447; 1979 c. 330; 1985 a. 176; 1993 a. 375 ss. 10, 12, 13; 1993 a. 377, 446, 491.

48.67 Rules governing child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities and county departments. The department shall promulgate 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, treatment foster homes, group homes, shelter care facilities and county departments. 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 promulgating these rules.

History: 1975 c. 307; 1977 c. 29, 205, 271, 418, 447; 1979 c. 300; 1985 a. 176; 1993 a. 375, 446.

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 or treatment foster homes. Participation in the program shall be voluntary and shall be limited to persons operating foster homes or treatment 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; 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 and treatment 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 appropriations under s. 20.435 (3) (ho) and (6) (a) to enable foster parents and treatment foster parents to attend education programs approved under sub. (2) and shall promulgate rules concerning disbursement of the funds. Moneys disbursed under this subsection may be used for the following purposes:

(a) Care of residents of the foster home or treatment 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); 1985 a. 29, 176; 1989 a. 31, 107; 1993 a. 446.

48.677 African American foster parent recruitment. A private, nonprofit organization may apply to the department for a grant from the appropriations under s. 20.435 (7) (de) and (pm) to recruit African American foster parents, including African American prospective adoptive parents, in communities that have a high percentage of African American children and a high percentage of children in out–of–home placements. The department shall review the applications submitted under this section and determine the number of grants that will be awarded, which of the applicants will receive grants and the amount of each grant. A private, nonprofit organization receiving a grant under this section shall cooperate and coordinate its activities under the grant with the county department serving the area from which the private, nonprofit organization recruits African American foster parents.

History: 1993 a. 437.

48.68 Investigation of applicant; issuing of license. **(1)** After receipt of an application for a license, the department shall investigate to determine if the applicant meets the minimum requirements for a license adopted by the department under s. 48.67. In determining whether to issue a license, the department may consider any action by the applicant, or by an employe of the applicant, that constitutes a substantial failure by the applicant or employe to protect and promote the health, safety and welfare of a child. Upon satisfactory completion of this investigation and payment of the fee required under s. 48.615 (1) (a) or (b), 48.625 (2) (a) or 48.65 (3) (a), the department shall issue a license under s. 48.66 (1) or, if applicable, a probationary license under s. 48.69. At the time of initial licensure and license renewal, the department shall provide a foster home licensee with written information relating to the age–related monthly foster care rates and supplemental payments specified in s. 49.19 (12) [48.62 (4)], including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

NOTE: The bracketed language indicates the correct cross–reference.

(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 issued 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 issuing 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; 1991 a. 39; 1993 a. 375, 395, 491.

48.69 Probationary licenses. If any child welfare agency, shelter care facility, group home or day care center that has not been previously issued a license under s. 48.66 (1) applies for a license, meets the minimum requirements for a license established under s. 48.67 and pays the applicable fee referred to in s. 48.68 (1), the department shall issue a probationary license to that child welfare agency, shelter care facility, group home or day care center. A probationary license is valid for up to 6 months after the date of issuance unless renewed under this section or suspended or revoked under s. 48.715. Before a probationary license expires, the department shall inspect the child welfare agency, shelter care facility, group home or day care center holding the probationary license and, if the child welfare agency, shelter care facility, group home or day care center meets the minimum requirements for a license established under s. 48.67, the department shall issue a license under s. 48.66 (1). A probationary license issued under this section may be renewed for one 6–month period.

History: 1975 c. 307; 1977 c. 271; 1985 a. 176; 1993 a. 375.

48.70 Provisions of licenses. **(1)** GENERAL. Each license shall state the name of the person licensed, the premises included under the license, the maximum number of children who can be received and their age and sex and such additional information and special conditions as the department may prescribe.

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

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

History: 1973 c. 90; 1975 c. 307; 1977 c. 271; 1985 a. 176; 1993 a. 375, 446.

48.715 Sanctions and penalties. **(1)** In this section, "licensee" means a person who holds a license under s. 48.66 (1) or a probationary license under s. 48.69 to operate a child welfare agency, shelter care facility, group home or day care center.

(2) If the department provides written notice of the grounds for a sanction, an explanation of the types of sanctions that may be imposed under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

(a) That a person stop operating a child welfare agency, shelter care facility, group home or day care center if the child welfare agency, shelter care facility, group home or day care center is without a license in violation of s. 48.66 (1) or a probationary license in violation of s. 48.69.

(b) That a person who employs a person who has had a license under s. 48.66 (1) or a probationary license under s. 48.69 revoked within the previous 5 years terminate the employment of that person within 30 days after the date of the order. This paragraph includes employment of a person in any capacity, whether as an officer, director, agent or employe.

(c) That a licensee stop violating any provision of licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67.

(d) That a licensee submit a plan of correction for violation of any provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.67.

(e) That a licensee implement and comply with a plan of correction provided by the department or previously submitted by the licensee and approved by the department.

(f) That a licensee close the intake of any new children until all violations of the provisions of licensure under s. 48.70 (1) and the rules promulgated by the department under s. 48.67 are corrected.

(g) That a licensee provide training for the licensee's staff members as specified by the department.

(3) If the department provides written notice of the grounds for a penalty, an explanation of the types of penalties that may be imposed under this subsection and an explanation of the process for appealing a penalty imposed under this subsection, the department may impose any of the following penalties against a licensee or any other person who fails to comply with an order issued under sub. (2) by the time specified in the order:

(a) A daily forfeiture amount per violation of not less than $10 nor more than $50. All of the following apply to a forfeiture under this paragraph:

1. Within the limits specified in this paragraph, the department may, by rule, set daily forfeiture amounts and payment deadlines based on the size and type of facility or agency and the seriousness of the violation. As part of the order, the department may set daily forfeiture amounts that increase periodically within the statutory limits if there is continued failure to comply with an order issued under sub. (2).

2. The department may directly assess a forfeiture imposed under this paragraph by specifying the amount of that forfeiture in the notice provided under this subsection.

3. A person against whom the department has assessed a forfeiture shall pay that forfeiture to the department within 10 days after receipt of notice of the assessment or, if that person contests that assessment under s. 48.72, within 10 days after receipt of the final decision after exhaustion of administrative review or, if that person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The department shall remit all forfeitures paid under this subdivision to the state treasurer for deposit in the school fund.

4. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this paragraph that has not been paid as provided in subd. 3. The only contestable issue in an action under this subdivision is whether or not the forfeiture has been paid.

(b) Suspension of the licensee's license for not more than 2 weeks.

(c) Refusal to renew a license or a probationary license.

(d) Revocation of a license or a probationary license as provided in sub. (4).

(4) If the department provides written notice of revocation and the grounds for revocation as provided in sub. (4m) and an explanation of the process for appealing a revocation under this subsection, the department may revoke a license issued under s. 48.66 (1) or a probationary license issued under s. 48.69 for any of the following reasons:

(a) The department has imposed a penalty on the licensee under sub. (3) and the licensee or a person under the supervision of the licensee either continues to violate or resumes violation of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section forming any part of the basis for the penalty.

(b) The licensee or a person under the supervision of the licensee has committed a substantial violation, as determined by the department, of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section.

(c) The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the child welfare agency, shelter care facility, group home or day care center that directly threatens the health, safety or welfare of any child under the care of the licensee.

(d) The licensee or a person under the supervision of the licensee has violated, as determined by the department, a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section that is the same as or similar to a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section that the licensee or a person under the supervision of the licensee has violated previously.

(4m) (a) For a revocation under sub. (4) (a) or (d), the department shall provide to the licensee written notice of the revocation and the grounds for revocation not less than 30 days before the date of the revocation. The revocation will take effect only if the violation on which the revocation is based remains substantially uncorrected at the end of the 30–day notice period.

(b) For revocations under sub. (4) (b) or (c), the department may revoke the license or probationary license immediately upon written notice to the licensee of the revocation and the grounds for revocation.

(5) The department may deny a license under s. 48.66 (1) or a probationary license under s. 48.69 to any person who has had a license under s. 48.66 (1) or a probationary license under s. 48.69 revoked within the previous 5 years.

History: 1991 a. 275; 1993 a. 375.

48.72 Appeal procedure. Any person aggrieved by the department's refusal or failure to issue or renew a license or by any action taken by the department under s. 48.715 has the right to an administrative hearing provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227, the aggrieved person shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department's refusal or failure to issue or renew a license or the department's action taken under s. 48.715. The department shall hold an administrative hearing under s. 227.44 within 30 days after receipt of the request for the administrative hearing unless the aggrieved person consents to an extension of that time period. Judicial review of the department's decision may be had as provided in ch. 227.

History: 1991 a. 275; 1993 a. 375.

48.73 Inspection of licensees. The department may visit and inspect each child welfare agency, foster home, treatment 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; 1993 a. 446.

48.735 Immunization requirements; day care centers. The department, after notice to a licensee, may suspend, revoke or refuse to renew a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of s. 252.04.

History: 1989 a. 120; 1993 a. 27.

48.737 Lead screening, inspection and reduction requirements; day care centers. The department, after notice to a day care provider certified under s. 48.651, or a day care center that holds a license under s. 48.65 or a probationary license under s. 48.69, may suspend, revoke or refuse to renew a license or certification in any case in which the department finds that there has been a substantial failure to comply with any rule promulgated under s. 254.162, 254.168 or 254.172.

History: 1993 a. 450, 491.

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 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 subunit of 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 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; 1985 a. 176.

48.75 Foster homes and treatment foster homes licensed by county departments and by child welfare agencies. (1) Child welfare agencies, if licensed to do so by the department, and county departments may license foster homes and treatment foster homes under the rules promulgated by the department under s. 48.67 governing the licensing of foster homes and treatment foster homes. A foster home or treatment foster home license shall be issued for a term not to exceed 2 years from the date of issuance, is not transferable and may be revoked by the child welfare agency or by the county department because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department promulgated 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.

(1g) (a) A county department may license a foster home only if the foster home is located in the county of the county department, except that a county department may license a foster home located in another county if any of the following applies:

1. The person who will be licensed to operate the foster home is a relative, as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a., or a guardian of the child who will be placed in the foster home.

2. A foster parent licensed by the county department moves to the other county with a child who has been placed in the foster parent's home and the license will allow the foster parent to continue to care for that child.

3. The county of the county department issuing the license and the county in which the foster home is located are contiguous.

4. The county of the county department issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833 or 48.837.

(b) A license issued under this subsection shall specifically identify each child to be placed in the foster home and shall terminate on the removal of all of those children from the foster home.

(c) No license may be issued under this subsection unless the county department issuing the license has notified the county department of the county in which the foster home will be located of its intent to issue the license and the 2 county departments have entered into a written agreement under this paragraph. A county department is not required to enter into any agreement under this paragraph allowing the county department of another county to license a foster home within its jurisdiction. The written agreement shall include all of the following:

1. A statement that the county department issuing the license is responsible for providing services to the child who is placed in the foster home, as specified in the agreement.

2. A statement that the county department issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

3. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

(d) If the county department issuing a license under this subsection violates the agreement under par. (c), the county department of the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, require the county department that issued the license to remove the child from the foster home within 30 days after receipt, by the county department that issued the license, of notification of the termination of the agreement.

(1r) At the time of initial licensure and license renewal, the child welfare agency or county department issuing a license under sub. (1) or (1g) shall provide the licensee with written information relating to the age–related monthly foster care rates and supplemental payments specified in s. 49.19 (12), [48.62 (4)] including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

NOTE: The bracketed language indicates the correct cross–reference.

(2) Any foster home or treatment foster home applicant or licensee of a county department 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.

History: 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 336; 1993 a. 395, 446.

48.76 Penalties. In addition to the sanctions and penalties provided in s. 48.715, 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 for not more than one year in county jail or both.

History: 1977 c. 418 s. 929 (18); 1979 c. 300; 1991 a. 275; 1993 a. 375.

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) 585, 773 (1975); 1977 c. 418 s. 929 (18); 1979 c. 300.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

48.78 Confidentiality of records. (1) In this section, unless otherwise qualified, "agency" means the department, a county department, a licensed child welfare agency, a licensed day care center or a licensed maternity hospital.

(2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under sub. (3) or s. 48.371, 48.38 (5) (b) or (d), 48.432, 48.433, 48.93 or 48.981 (7) or by order of the court.

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare or law enforcement agency regarding an individual in the care or legal custody of one of the agencies.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department from disclosing information about an individual formerly in its legal custody under s. 48.34 (4m) to the department of corrections, if the individual is at the time of disclosure any of the following:

NOTE: Par. (d) (intro.) is amended eff. 7–1–95 by 1993 Wis. Act 385 to read:

(d) (intro.) Paragraph (a) does not prohibit the department or a county department from disclosing information about an individual formerly under the supervision of the department under s. 48.34 (4m) or formerly under the supervision of the department or county department under s. 48.34 (4n) to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.

2. Under sentence to the Wisconsin state prisons under s. 973.15.

3. Subject to an order under s. 48.366 and placed in a state prison under s. 48.366 (8).

4. On probation to the department of corrections under s. 973.09.

5. On parole under s. 302.11 or ch. 304.

(e) Paragraph (a) does not prohibit the department of health and social services from disclosing information about an individual adjudged delinquent under s. 48.31 for a sexually violent offense, as defined in s. 980.01 (6), to the department of justice, or a district attorney or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition under ch. 980. The court in which the petition under s. 980.02 is filed may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph.

(3) If a child adjudged delinquent on the basis of a violation of s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.60, 948.605 or 948.61 or any crime specified in ch. 940 has escaped from a secured correctional facility, has been allowed to leave a secured correctional facility for a specified time period and is absent from the facility for more than 12 hours after the expiration of the specified period or has run away from the child's placement in the community while under corrective sanctions supervision, the department may release the child's name and any information about the child the department determines to be necessary for the protection of the public or to secure the child's return to the facility or placement. The department shall promulgate rules establishing guidelines for the release of the child's name or information about the child to the public.

NOTE: Sub. (3), as affected by 1993 Wis. Acts 16, 92, 95, 218 and 227, is amended eff. 12–1–95 by 1993 Wis. Act 377 to read:

(3) If a child adjudged delinquent on the basis of a violation of s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.60, 948.605 or 948.61 or any crime specified in ch. 940 has escaped from a secured correctional facility, has been allowed to leave a secured correctional facility for a specified time period and is absent from the facility for more than 12 hours after the expiration of the specified period or has run away from the child's placement in the community while under corrective sanctions or youthful offender supervision, the department of health and social services or the department of corrections may release the child's name and any information about the child that is necessary for the protection of the public or to secure the child's return to the facility or placement. The department of health and social services shall promulgate rules establishing guidelines for the release of the child's name or information about the child to the public, except that the department of corrections shall promulgate rules establishing guidelines for the release to the public of the name of a child, or information about a child, who is a participant in the youthful offender program.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491.

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.

Sub. (2) (a) requires juvenile court, not criminal court, to exercise discretion in disclosing records. In Interest of K. K. C. 143 W (2d) 508, 422 NW (2d) 142 (Ct. App. 1988).

Sub. (2) (a) allows a court exercising discretion to order an agency to disclose records or information regarding a juvenile without being subject to the restrictions placed on agencies under sub. (3). Interest of Peter B. 184 W (2d) 57, 516 NW (2d) 746 (Ct. App. 1994).

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 has 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 coordinating 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.

History: 1989 a. 31, 107.

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 coordinating 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; GUARDIANSHIP

48.81 Who may be adopted. Any minor who meets all of the following criteria may be adopted:

(1) Except as provided under s. 48.839 (3) (b) or if an appointment of guardianship has been made under s. 48.831, a minor whose parental rights have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(2) A minor who is present within this state at the time the petition for adoption is filed.

History: 1987 a. 383; 1989 a. 161.

Sub. (1) prevents a birth parent's nonmarital partner from adoptiing the birth parent's child absent termination of the birth parent's parental rights. Except in the case of stepparent adoption, a child is not eligible for adoption unless the parental rights of both birth parents are terminated. This provision does not violate the constitutional rights of either the child or nonmarital partner. Interest of Angel Lace M. 184 W (2d) 492, 516 NW (2d) 678 (1994).

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 the person is deaf, blind or has other physical handicaps.

(6) No otherwise qualified person may be denied the benefits of this subchapter because of his or her race, color, ancestry or national origin.

History: 1981 c. 359 s. 16; 1983 a. 350; 1989 a. 161; 1991 a. 316.

Standing to object to adoption proceedings turns on the right to petition for adoption; grandparents excluded from petitioning under s. 48.90 (1) (a) had no standing to object to the adoption of their grandchildren. Adoption of J.C.G. 177 W (2d) 424, 501 NW (2d) 908 (Ct. App. 1993).

48.83 Jurisdiction and venue. (1) The court of the county where the proposed adoptive parent or child resides, 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 proposed adoptive parent or child resides 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; 1989 a. 161.

48.831 Appointment of guardian for child without a living parent. (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of a child who does not have a living parent if a finding as to the adoptability of a child is sought. Chapter 880 applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. An appointment of a guardian of the estate of a child who does not have a living parent shall be conducted in accordance with the procedures specified in ch. 880.

(1m) PETITION. Any of the following may file a petition for appointment of a guardian for a child who is believed to be in need of protection or services because he or she is without a living parent as described under s. 48.13 (1):

(a) The department.

(b) A county department.

(c) A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

(d) A relative or family member of the child or a person whom the child has resided with and who has also acted as a parent of the child.

(e) A guardian appointed under ch. 880 whose resignation as guardian has been accepted by a court under s. 880.17.

(2) REPORT. If the department, county department or child welfare agency files a petition, it shall submit a report to the court containing as much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If the petition is filed by a relative or other person specified under sub. (1m) (d), the court shall order the department or a child welfare agency, if the department or agency consents, or a county department to file a report containing the information specified in this subsection. The department, county department or child welfare agency shall file the report at least 5 days before the date of the fact–finding hearing on the petition.

(3) FACT–FINDING HEARING. The court shall hold a fact–finding hearing on the petition, at which any party may present evidence relevant to the issue of whether the child has a living parent. If the court finds that the child has a living parent, the court shall dismiss the petition or grant the petitioner leave to amend the petition to a petition under s. 48.42 (1).

(4) DISPOSITIONAL HEARING. (a) If the court, at the conclusion of the fact–finding hearing, finds that the child has no living parent, the court shall proceed to a dispositional hearing. Any party may present evidence, including expert testimony, relevant to the issue of disposition. In determining the appropriate disposition, the court shall consider any factors under s. 48.426 (3) (a) to (d) that are applicable.

(b) If the court finds that adoption is in the child's best interest, the court shall order that the child be placed in the guardianship and custody of one of the following:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).

2. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

3. The department.

(c) If the court finds that adoption is not in the child's best interest, the court shall order that the child be placed in the guardianship of the department and place the child in the custody of a county department.

(d) Section 48.43 (5), (5m) and (7) applies to orders under pars. (b) and (c).

(e) The court shall order the custodian appointed under par. (b) or (c) to prepare a permanency plan under s. 48.38 for the child within 60 days after the date of the order. A permanency plan ordered under this paragraph is subject to review under s. 48.38

(5). In preparing a permanency plan, the department, county department or child welfare agency need not include any information specified in s. 48.38 (4) that relates to the child's parents or returning the child to his or her home. In reviewing a permanency plan, a court or panel need not make any determination under s. 48.38 (5) (c) that relates to the child's parents or returning the child to his or her home.

History: 1989 a. 161.

48.832 Transfer of guardianship upon revocation of guardian's license. If the department revokes the license of a county department licensed under s. 48.57 (1) (e) or (hm) to accept guardianship, or of a child welfare agency licensed under s. 48.61 (5) to accept guardianship, the department shall file a motion in the court that appointed the guardian for each child in the guardianship of the county department or agency, requesting that the court transfer guardianship and custody of the child. The motion may specify a county department or child welfare agency that has consented to accept guardianship of the child. The court shall transfer guardianship and custody of the child either to the county department or child welfare agency specified in the motion or to another county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5) which consents to the transfer. If no county department or child welfare agency consents, the court shall transfer guardianship and custody of the child to the department.

History: 1989 a. 161.

48.833 Placement of children for adoption by the department, county departments and child welfare agencies. The department, a county department 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 or a licensed treatment foster home without a court order if the department, county department under s. 48.57 (1) (e) or (hm) or the child welfare agency is the guardian of the child or makes the placement at the request of another agency which is the guardian of the child. When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department or child welfare agency making the placement shall enter into a written agreement with the adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the adoptive parent.

History: 1981 c. 81, 384; 1985 a. 176; 1989 a. 336; 1993 a. 446.

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 of a child during a period of physical placement with a parent who does not have legal custody of the child.

(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; 1987 a. 355.

Concurrent TPR/adoption proceedings under 48.835 are subject to requirement under 48.422 that initial hearing be held within 30 days of filing petition. In re J.L.F. 168 (2d) 634, 484 NW (2d) 359 (Ct. App. 1992).

Grandparents excluded from petitioning under s. 48.90 (1) (a) had no standing under this section to object to the adoption of their grandchildren. Adoption of J.C.G. 177 W (2d) 424, 501 NW (2d) 908 (Ct. App. 1993).

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 or treatment foster home under s. 48.62.

(1m) WRITTEN AGREEMENT. Any agreement between the birth parent and adoptive parent that relates to the payment of any expenses described in sub. (2) (d) shall be in writing, with the amount and purpose of the expenses enumerated, and made part of the petition filed under sub. (2).

(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 department 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 child welfare 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 department 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 hearing on the petition under sub. (2). The child, if he or she is 12 years of age or over, and each parent having custody of the child shall attend the hearing on the petition under sub. (3). If the parent who has custody of the child consents and the court approves, the proposed adoptive parents may be present at the hearing on the petition under sub. (3). The court may, for good cause, waive the requirement that the child attend either of the hearings.

(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).

(b) At the beginning of the hearing held under sub. (2), the court shall review any agreement that is attached to the petition in accordance with sub. (1m). The court shall determine whether any conditions specified in the agreement are coercive to the birth parent. Making the payment of the birth parent's expenses that are permitted under s. 948.24 (1) (a) or (c) conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall do one of the following:

1. Dismiss the petitions under subs. (2) and (3).

2. Amend the agreement under sub. (1m) to delete any coercive conditions, if the parties agree to the amendment.

(c) 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.

(d) 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 department under s. 48.57 (1) (e) or (hm) or a child welfare 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).

(8) ATTORNEY REPRESENTATION. The same attorney may not represent the adoptive parents and the birth mother or birth father.

History: 1981 c. 81; 1985 a. 176; 1989 a. 161; 1993 a. 446.

Grandparents are not parties under this section. However, grandparent testimony may be necessary to determine the child's best interest. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

Adoption and termination proceedings in Wisconsin: A reply proposing limiting judicial discretion. Cooper and Nelson, 66 MLR 641 (1983).

48.838 Foreign adoption fees. (1) In this section, "foreign adoption" means the adoption of a child, who is a citizen of a foreign country, in accordance with any of the types of adoption procedures specified under this subchapter.

(2) The department may charge a fee of not more than $75 to the adoptive parents for reviewing foreign adoption documents and for providing necessary certifications and approvals required by state and federal law.

(3) The department may also charge a fee of not more than $75 to the adoptive parents for the review and certification of adoption documents, and for the provision of departmental approval of placements as specified in s. 48.97, for adoptions that occur in a foreign country.

History: 1989 a. 31.

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 preadoptive 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, to a county department under s. 48.57 (1) (e) or (hm) or to a child welfare agency under s. 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 or a 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; 1985 a. 176.

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) In this section, unless otherwise qualified, "agency" means any public or private entity except an individual.

(1m) 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 department 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 individual, 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 department or, with the consent of the department or a licensed child welfare agency, order the department or the child welfare 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 department under s. 48.981. The department, county department or child welfare 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 department 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 child welfare 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; 1985 a. 176.

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 a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 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 the department, a licensed child welfare agency or a county department under s. 48.57 (1) (e) or (hm) 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; 1985 a. 176.

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.

Standing to object to adoption proceedings turns on the right to petition for adoption; grandparents excluded from petitioning under sub. (1) (a) had no standing to object to the adoption of their grandchildren. Adoption of J.C.G. 177 W (2d) 424, 501 NW (2d) 908 (Ct. App. 1993).

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

(2) In an adoption proceeding for a 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.

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

History: 1973 c. 263; 1979 c. 330; 1981 c. 81; 1983 a. 447; 1987 a. 383.

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

48.915 Adoption appeals given preference. An appeal from a judgment granting or denying an adoption shall be given preference.

History: 1987 a. 383; 1993 a. 395 s. 30; Stats. 1993 s. 48.915.

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 the adoptive person's 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. Notwithstanding the extinction of all parental rights under this subsection, a court may order reasonable visitation under s. 48.925.

(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; 1991 a. 191, 316.

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.

See note to 767.245, citing In re Marriage of Soergel, 154 W (2d) 564, 453 NW (2d) 624 (1990).

Adoption of child of deceased parent does not terminate deceased parent's parents' grandparental visitation rights under 880.115. Grandparental Visitation of C.G.F., 168 W (2d) 62, 483 NW (2d) 803 (1992).

Except in the case of stepparent adoption, the parental rights of both birth parents are terminated, effectively preventing a birth parent's nonmarital partner from adopting the birth parent's child. This provision does not violate the constitutional rights of either the child or nonmarital partner. Interest of Angel Lace M. 184 W (2d) 492, 516 NW (2d) 678 (1994).

48.925 Visitation rights of certain persons. (1) Upon petition by a relative who has maintained a relationship similar to a parent–child relationship with a child who has been adopted by a stepparent or relative, the court may grant reasonable visitation rights to that person if the petitioner has maintained such a relationship within 2 years prior to the filing of the petition, if the adoptive parent or parents, or, if a birth parent is the spouse of an adoptive parent, the adoptive parent and birth parent, have notice of the hearing and if the court determines all of the following:

(a) That visitation is in the best interest of the child.

(b) That the petitioner will not undermine the adoptive parent's or parents' relationship with the child or, if a birth parent is the spouse of an adoptive parent, the adoptive parent's and birth parent's relationship with the child.

(c) That the petitioner will not act in a manner that is contrary to parenting decisions that are related to the child's physical, emotional, educational or spiritual welfare and that are made by the adoptive parent or parents or, if a birth parent is the spouse of an adoptive parent, by the adoptive parent and birth parent.

(2) Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the adopted child.

(3) This section applies to every child in this state who has been adopted, by a stepparent or relative, regardless of the date of the adoption.

(4) Any person who interferes with visitation rights granted under sub. (1) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.

History: 1991 a. 191.

Grandparents' Visitation Rights Following Adoption: Expanding Traditional Boundaries in Wiscoonsin. Hintz. 1994 WLR 484.

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

48.93 Records closed. (1) In this section, "adoptee" has the meaning given in s. 48.432 (1) (a).

(1d) 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 adoptee, 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 adoptee or about the adoptee's birth parents which it has on file and with nonidentifying social history information about the adoptee'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 adoptee or the adoptee's birth parents. The agency may charge a requester a fee for the cost of verifying, purging, summarizing, copying and mailing the information according to the fee schedule established by the department under s. 48.432 (3) (c). The fee may not be more than $150 and may be waived by the agency.

(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; 1989 a. 31.

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, or the adopting parent and a birth parent who is the spouse of the adopting parent, 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. 69.15 (2) or any other law of this state.

History: 1981 c. 359 s. 16; 1985 a. 315 s. 22; 1991 a. 316.

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 or a county department under s. 48.57 (1) (e) or (hm), the minor shall remain in the legal custody of the guardian.

History: 1977 c. 271, 449; 1981 c. 81; 1985 a. 176.

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 Adoption assistance. (1) DEFINITION. In this section, "adoption assistance" means payments by the department to the adoptive or proposed adoptive parents of a child which are designed to assist in the cost of care of that child after an agreement under sub. (4) has been signed and the child has been placed for adoption with the adoptive or proposed adoptive parents.

(2) APPLICABILITY. The department may provide adoption assistance only when it has determined that such assistance is necessary to assure the child's adoption.

(3) TYPES. The department may provide adoption assistance for maintenance, medical care or nonrecurring adoption expenses, or for any combination of those types of adoption assistance, according to the following criteria:

(a) *Maintenance.* For support of a child who was in foster care or treatment foster care immediately prior to adoption, the adoption assistance for maintenance shall be equivalent to the amount of that child's foster care or treatment foster care payment. For support of a child not in foster care or treatment foster care immediately prior to placement with a subsidy, the adoption assistance for maintenance shall be equivalent to the uniform foster care rate.

(b) *Medical.* The adoption assistance for medical care 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.

(c) *Nonrecurring adoption expenses.* Subject to any maximum amount provided by the department by rule promulgated under sub. (5), the adoption assistance for nonrecurring adoption expenses shall be sufficient to pay the reasonable and necessary adoption fees, court costs, legal fees and other expenses that are directly related to the adoption of the child and that are not incurred in violation of any state or federal law.

(4) PROCEDURE. A written agreement to provide adoption assistance 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 or for children in the guardianship of an American Indian tribal agency in this state. The adoption assistance 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; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446.

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 treatment 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 department or licensed child welfare agency, who brings a child into this state for the purpose of placing the child in a foster home or treatment 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 promulgate all rules necessary for the enforcement of this section.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1981 c. 81; 1985 a. 176; 1985 a. 332 s. 251 (5); 1993 a. 446.

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, 948.02 or 948.025.

3. A violation of s. 948.05.

4. Permitting, allowing or encouraging a child to violate s. 944.30.

5. Emotional damage.

6. A violation of s. 948.055.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother or half sister.

2. The child's guardian.

3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. An employe of a residential facility or child caring institution in which the child was or is placed.

6. A person who provides or has provided care for the child in or outside of the child's home.

7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd. 1.

(b) "Child" means any person under 18 years of age.

(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, 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.

(cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.

2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(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.

(fm) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother–in–law, sister–in–law, stepuncle or stepaunt.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person named in a report or record as either of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) PERSONS REQUIRED TO REPORT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, school teacher, administrator or counselor,

mediator under s. 767.11, 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 county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, speech–language pathologist, audiologist, emergency medical technician 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 abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), 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 abuse or neglect and that abuse or neglect 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.

NOTE: Sub. (2) is amended eff. 7–1–95 by 1993 Wis. Act 443 to read:

(2) PERSONS REQUIRED TO REPORT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, school teacher, administrator or counselor, mediator under s. 767.11, 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 county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, dietitian, speech–language pathologist, audiologist, emergency medical technician 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 abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), 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 abuse or neglect and that abuse or neglect 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.

(2m) EXCEPTION TO REPORTING REQUIREMENT. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined under sub. (1) (a) 2., sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) REPORTS; INVESTIGATION. (a) *Referral of report.* A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or the sheriff or city, village or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county department all cases reported to it. The county department may require that a subsequent report be made in writing. Each county department 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.

(bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Winnebago tribe, if a county department which receives a report under par. (a) pertaining to a child knows that he or she is an Indian child who resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child and the fact that a report has been received about that child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated or the child is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Winnebago service area where the child resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Winnebago service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the county department or licensed child welfare agency under contract with the county department shall, in accordance with the authority granted to the county department 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 be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations. If the investigation is of a report of abuse or neglect or threatened abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the inves-

tigation is of a report of abuse or neglect or threatened abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the county department or licensed child welfare agency involved to the child's parents, guardian or legal custodian. The county department or licensed child welfare agency under contract with the county department 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 dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an employe of the county department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for 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.

b. If the person making the investigation is an employe of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employe of the county department 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 department 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 department 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 department 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 department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination 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 department 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 department and licensed child welfare agency under contract with the county department 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 department and licensed child welfare agency under contract with the county department shall update the record every 6 months until the case is closed.

6. The county department or licensed child welfare agency under contract with the county department 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 department 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 department 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 or neglect will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that it receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation it or a licensed child welfare agency under contract with the county department conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect, and for planning and policy development.

9. The county agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) *Contract with licensed child welfare agencies.* A county department may contract with a licensed child welfare agency to fulfill its duties specified under par. (c) 1., 2. b., 5., 6. and 8. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department contracts.

(d) *Independent investigation.* 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county department under s. 46.215 or 46.22.

2. If an agent or employe of a county department or licensed child welfare agency under contract with the county department required to investigate under this subsection is the subject of a report, or if the county department or licensed child welfare agency under contract with the county department determines that, because of the relationship between the county department or licensed child welfare agency under contract with the county department and the subject of a report, there is a substantial probability that the county department or licensed child welfare agency under contract with the county department would not conduct an unbiased investigation, the county department or licensed child welfare agency under contract with the county department shall, after taking any action necessary to protect the child, notify the department. Upon receipt of the notice, the department or a county department or child welfare agency designated by the department shall conduct an independent investigation. If the department designates a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate that agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(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 department

and, if the institution making the report initially is a hospital, to the hospital.

(6) PENALTY. Whoever intentionally 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 made under this section, notices provided under sub. (3) (bm) and records maintained by the department, county departments or licensed child welfare agencies under contract with the county departments 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, a county department or licensed child welfare agency under contract with the county departments, or a tribal social services department.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employe of a county department under s. 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county department under s. 46.215 or 46.22.

6. A multidisciplinary child abuse and neglect team recognized by the county department.

6m. A person employed by a child advocacy center recognized by the county board or the county department, to the extent necessary to perform the services for which the center is recognized by the county board or the county department.

7. Another county department, or licensed child welfare agency under contract with that county department, or a tribal social services department that is currently investigating a report of suspected or threatened child abuse or neglect involving a 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.

10g. A court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10. or 10g.

11m. An attorney representing the interests of an Indian tribe or band or of an Indian child in proceedings under subd. 10m. or 10r.

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 department or licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(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 or 767.325 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), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) A county agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(d) The department may have access to any report or record maintained by a county department or licensed child welfare agency under contract with a county department 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 departments to the extent feasible shall conduct continuing education and training programs for staff of the department, county departments and tribal social services departments, 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 in the identification, prevention and treatment of child abuse and neglect. The department and county departments 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 department 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 department shall give priority to parental organizations combating child abuse and neglect.

(d) 1. Each county department or licensed child welfare agency under contract with a county department staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect shall successfully complete training in child abuse and neglect protective services approved by the department. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and county department or licensed child welfare agency under contract with a county department staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06 (1) (am) 3 and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), 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.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each county department described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 W (2d) R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491.

See note to Art. I, sec. 11, citing State v. Boggess, 115 W (2d) 443, 340 NW (2d) 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 NW (2d) 266, 400 NW (2d) 42 (Ct. App. 1986).

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.

Medical or mental health professional may report suspected child abuse under the permissive provisions of (2) when abuser, rather than victim, is seen in the course of professional duties. 51.30 doesn't bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section discussed. 76 Atty. Gen. 286.

Disclosure under (7) (a) 1 and (c) is mandatory. 77 Atty. Gen. 84.

Discussion of responsibility of county departments of social services to investigate allegations of child abuse and neglect. Department staff members may interview child on public school property, and may exclude school personnel from interview. School personnel cannot condition on-site interviews on notification of child's parents. 79 Atty. Gen. 48.

See note to 46.22 citing 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. OAG 10–93.

See note to Art. I, sec. 3, citing New York v. Ferber, 458 US 747 (1982).

See note to Art. I, sec. 7, citing Pennsylvania v. Ritchie, 480 US 39 (1987).

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).

(bm) "Cultural competency" means the ability of an individual or organization to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.

(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 (19), or a public agency which provides or proposes to provide child abuse and neglect prevention and intervention services or parent education.

(2) POWERS AND DUTIES. The board shall:

(a) Biennially, 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, early childhood family education centers and right from the start projects. The plan shall also ensure that the grants will be distributed throughout all geographic areas of the state and in both urban and rural communities. For grants provided under sub. (6), the plan shall also ensure that the grants are distributed based on population.

(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 subs. (4), (6) and (7).

(d) Solicit and accept contributions, grants, gifts and bequests for the children's trust fund or for any other purpose for which a contribution, grant, gift or bequest is made and received. Moneys received under this paragraph may be deposited in the appropriation accounts under s. 20.433 (1) (i), (q) or (r).

(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.

(gm) Provide, for use by the board in its statewide projects under sub. (5) and for use by organizations that receive grants under subs. (4), (6) and (7), educational and public informational materials and programming that emphasize the role of fathers in the primary prevention of child abuse and neglect.

(2m) DONATION USES. If money is accepted by the board for the children's trust fund or for any other purpose under sub. (2) (d), the board shall use the money in accordance with the wishes of the donor to do any of the following:

(a) Award grants under subs. (4), (6) and (7).

(b) Pay for actual and necessary operating costs under sub. (3).

(c) Fund statewide projects under sub. (5).

(3) STAFF AND SALARIES. The board shall determine the qualifications of and appoint, in the classified service, an executive director and staff. The salaries of the executive director and staff and all actual and necessary operating expenses of the board shall be paid from the appropriations under s. 20.433 (1) (g), (i), (k), (m) and (r).

(4) AWARD OF GRANTS. (a) From the appropriations under s. 20.433 (1) (h), (i), (k), (m) 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). 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 the need for the prevention of child abuse and neglect.

2. Community–based programs on education for parenting, prenatal care, perinatal bonding, child development, 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 coordination of child abuse and neglect services between the organization and other resources, public and private, in the community and the state.

(5) STATEWIDE PROJECTS. From the appropriations under s. 20.433 (1) (i) and (r), the board shall administer any statewide project for which it has accepted money under sub. (2m) (c).

(6) AWARD OF EARLY CHILDHOOD FAMILY EDUCATION CENTER GRANTS. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), (ma) and (q), the board shall award grants to organizations in accordance with the request–for–proposal procedures developed under sub. (2) (a). No organization may receive a grant or grants under this subsection totaling more than $75,000 in any year.

(am) Notwithstanding the geographical and urban and rural distribution requirements under sub. (2) (a), the board shall allocate $75,000 from the appropriation under s. 20.433 (1) (h) in each fiscal year for the awarding of grants, in accordance with the request–for–proposal procedures developed under sub. (2) (a), to organizations located in counties with a population of 500,000 or more.

(b) A grant may be awarded only to an organization that agrees to make a 20% match to the grant, through either money or in–kind services.

(c) Each grant application shall include proof of the organization's ability to comply with par. (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 that provide parenting education services but not crisis intervention. Grants shall be used for direct parent education and referrals to other social services programs and outreach programs, including programs that provide education to parents in their homes. Programs supported by the grants shall track individual clients to ensure that they receive necessary services and shall emphasize direct services to families with children who are 3 years of age or less.

(e) Grants awarded under this subsection may not supplant any other funding for parenting education.

(f) By March 1, 1991, the board shall submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees on children, in the manner provided in s. 13.172 (3). The report shall include all of the following information about grants made under this subsection:

1. The number of grants made.

2. The name of all grant recipients.

3. The number of children served.

4. Whether or not each grant recipient achieved its stated goals.

(7) AWARD OF RIGHT FROM THE START GRANTS. (a) From the appropriations under s. 20.433 (1) (c), (i), (k) and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a).

(b) A grant may be awarded only to an organization that agrees to make a 20% match to the grant, through either money or in–kind services.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in–kind services proposed under par. (b) are subject to the approval of the board.

(d) Each grant application shall include proof that the organization has the cultural competency to provide services under the grant to persons and families in the various cultures in the organization's target population and that cultural competency is incorporated in the organization's policies, administration and practices. Each grant application shall also include proof of the organization's ability to do all of the following:

1. Maximize the coordination of new and existing family support, educational and health services and minimize the duplication of those services by coordinating and collaborating with other organizations in the planning and provision of the organization's right from the start project.

2. Provide programs that identify and build on a family's strengths and that encourage a family to become independent from the organization's right from the start project and other human services programs.

3. Provide culturally competent outreach services.

4. Provide or coordinate the provision of the community–based outreach, educational and family support services of an early childhood family education center.

(e) The board shall award grants to organizations for programs that provide parenting education services but not crisis intervention. A program supported by a grant shall provide culturally competent outreach services to persons who are the parents of a newborn infant. A program supported by a grant shall emphasize direct services to families with children who are 3 years of age or less and shall provide or coordinate the provision of the community–based outreach, educational and family support services of an early childhood family education center. The board shall provide technical assistance to organizations receiving grants under this subsection.

(f) Grants awarded under this subsection may not supplant any other funding for parenting education.

(fg) An organization that receives a grant under this subsection and under sub. (6) may not use the grant moneys received under this subsection to provide any services that the organization provides under the grant received under sub. (6).

(g) By September 1, 1995, the board shall submit a report to the appropriate standing committees under s. 13.172 (3). The report shall include all of the following information about grants made under this subsection:

1. The number of grants made.

2. The name of all grant recipients.

3. The number of children served.

4. Whether or not each grant recipient achieved its stated goals.

(h) The board shall conduct an evaluation of the effectiveness of the right from the start grant program under this subsection in achieving its stated goals and, by January 2, 1997, submit a report

on that evaluation to the appropriate standing committees under s. 13.172 (3).

History: 1983 a. 27; 1983 a. 109 s. 6; 1985 a. 29 ss. 930s, 3202 (8); 1987 a. 27, 184, 255; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437, 444, 491.

48.983 Purchase or possession of tobacco products prohibited. (1) In this section:

(a) "Cigarette" has the meaning given in s. 139.30 (1).

(b) "Law enforcement officer" has the meaning given in s. 30.50 (4s).

(c) "Tobacco products" has the meaning given in s. 139.75 (12).

(2) Except as provided in sub. (3), no child may do any of the following:

(a) Buy or attempt to buy any cigarette or tobacco product.

(b) Falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.

(c) Possess any cigarette or tobacco product.

(3) A child may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under s. 134.65 (1).

(4) A law enforcement officer shall seize any cigarette or tobacco product involved in any violation of sub. (2) committed in his or her presence.

(5) A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this section does not apply within any town, village or city that has adopted or adopts an ordinance under this subsection.

History: 1987 a. 336; 1991 a. 32, 95, 315.

48.985 Expenditure of federal child welfare funds. (1) FEDERAL PROGRAM OPERATIONS. From the appropriation under s. 20.435 (6) (n), the department shall expend moneys received under 42 USC 620 to 626 as follows:

(a) For the department's expenses in connection with administering the expenditure of funds received under 42 USC 620 to 626, not more than $273,700 in fiscal year 1993–94 and not more than $281,500 in fiscal year 1994–95.

(c) For innovative child welfare projects and services provided or purchased by the department, including training for foster parents and treatment foster parents and training for employes of county departments conducting investigations and providing services under s. 48.981, not more than $185,000 in each fiscal year.

(e) For the purpose of conducting child abuse and neglect independent investigations, not more than $35,000 in each fiscal year.

(f) For the purpose of providing child at risk field training to counties, not more than $50,000 in each fiscal year.

(2) COMMUNITY SOCIAL AND MENTAL HYGIENE SERVICES. (a) From the appropriation under s. 20.435 (7) (o), the department shall expend moneys received under 42 USC 620 to 626 as follows:

1. To county departments under ss. 46.215, 46.22 and 46.23, for the provision or purchase of child welfare projects and services including child abuse and neglect investigation and treatment services, subject only to local, state and federal requirements specific to the types of projects or services, not more than $1,858,000 in each fiscal year and for the allocation for services to children and families, not more than $567,300 in each fiscal year.

2. For family–based child welfare services under s. 46.40 (3) (a), not more than $831,700 in fiscal year 1993–94 and not more than $823,900 in fiscal year 1994–95.

3. In addition to the amounts allocated under subds. 1. and 2. and par. (b), for family–based child welfare services, including services to prevent and treat child abuse and neglect, and for contracting with counties and American Indian tribes for family–based child welfare services, the balance of any unanticipated federal child welfare funds received under 42 USC 620 to 626.

(b) From the appropriation under s. 20.435 (7) (o), of the moneys received under 42 USC 620 to 626, the department may expend, for the delivery of services to American Indians under s. 46.70, not more than $17,500 in the period beginning July 1, 1993, and ending September 30, 1993, not more than $70,000 in the period beginning October 1, 1993, and ending September 30, 1994, and not more than $52,500 in the period beginning October 1, 1994, and ending June 30, 1995.

(3) COMMUNITY YOUTH AND FAMILY AIDS. From the appropriation under s. 20.435 (3) (oo), the department shall allocate, to county departments under ss. 46.215, 46.22 and 46.23 for the provision of services under s. 46.26, not more than $1,100,000 in each fiscal year.

(4) RUNAWAY SERVICES. From the appropriation under s. 20.435 (7) (na) for runaway services, not more than $458,600 in each fiscal year.

History: 1987 a. 27; 1989 a. 31, 107; 1991 a. 39, 269; 1993 a. 16, 446.

48.987 Earnings of self–supporting minors. During any time when a parent of a minor neglects or refuses to provide for the minor's support, or support and education, the earnings of the minor shall be the minor's sole property as against such parent or any creditor of such parent.

History: 1977 c. 354 s. 94; Stats. 1977 s. 48.987; 1991 a. 316.

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 additional 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 s. 49.90 or 767.42, ch. 769 or any other applicable state law fixing responsibility for the support of children also may be invoked.

(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).

History: 1977 c. 354; Stats. 1977 s. 48.99; 1977 c. 447; Stats. 1977 s. 48.988; 1981 c. 390; 1983 a. 189; 1985 a. 29 s. 3202 (23); 1987 a. 403; 1993 a. 326.

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 ss. 48.60 (4) (b) and 48.988 (5). In the event of partial or complete default of performance under the compact, the provisions of s. 49.90 or 767.42, ch. 769 or 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; Stats. 1977 s. 48.995; 1977 c. 447; Stats. 1977 s. 48.989; 1981 c. 390; 1985 a. 29 s. 3202 (23); 1989 a. 31; 1993 a. 326.

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 cooperation 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) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative 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 cooperate 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 that parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the return of the juvenile. 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 the juvenile's running away, the juvenile's 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 or her 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. Further affidavits and other documents as may be deemed proper may be submitted with the 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 the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the return of the juvenile to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge 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 the juvenile. The 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 legal custody of the juvenile, and that the return of the juvenile is in the best interest and for the protec-

tion of the juvenile. 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 the juvenile runs away, the court may issue a requisition for the return of the 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 the 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 that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon a detention order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for his or her return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. 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 that juvenile's legal custody, that 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 the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the juvenile, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this compact pursuant to a requisition for the return of the juvenile 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 the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of the officers' authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this compact, without interference. Upon the return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to 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 the delinquent juvenile 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 the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of that person's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the delinquent juvenile's probation or parole or of the delinquent juvenile's escape from an institution or agency vested with legal custody or supervision of the delinquent juvenile, and the location of the 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 the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Further affidavits and other documents as may be deemed proper may be submitted with the 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 that person to take into custody and detain the delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon a detention order shall be delivered over to the officer whom the appropriate person or authority demanding the delinquent juvenile shall have appointed to receive the delinquent juvenile, unless the delinquent juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the delinquent juvenile of the demand made for the return of the delinquent juvenile and who may appoint counsel or guardian ad litem for the delinquent juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding shall have appointed to receive the delinquent juvenile. 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 legal custody or supervision of the person in any state party to this compact, the person may be taken into custody in any other state party to this compact without a requisition. In that event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for the person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a time, not exceeding 90 days, as will enable the person's 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 legal custody or supervision of the delinquent juvenile, there is pending in the state wherein the delinquent juvenile is detained any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the delinquent juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of that 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 the officers' authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this compact, without interference. Upon the return of the delinquent juvenile to the state from which the delinquent juvenile escaped or absconded, the delinquent juvenile shall be subject to

such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this 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 legal custody or supervision of the delinquent juvenile 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 or her immediate return to the state from which the juvenile or delinquent juvenile absconded, escaped or ran away. Consent shall be given by the juvenile or delinquent juvenile and his or her 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 or her counsel or guardian ad litem, if any, consent to the return of the juvenile or delinquent juvenile to the demanding state. Before the 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 or her 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 the juvenile or delinquent juvenile to the duly accredited officer or officers of the state demanding the return of the juvenile or delinquent juvenile, and shall cause to be delivered to the 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 the juvenile or delinquent juvenile to return unaccompanied to that state and shall provide the juvenile or delinquent juvenile with a copy of the court order; in that event a copy of the consent shall be forwarded to the compact administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

(7) ARTICLE VII - COOPERATIVE 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 the delinquent juvenile within the receiving state any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for any act committed in that state, or if the delinquent juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the delinquent juvenile 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 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 the delinquent juvenile's 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 cooperating 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 remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390; 1983 a. 189; 1991 a. 316.

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) or 48.998 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.

(3) Notwithstanding s. 48.991 (3) (b), "delinquent juvenile" does not include a person subject to an order under s. 48.366.

History: 1977 c. 449; 1981 c. 390; 1983 a. 189; 1985 a. 294; 1987 a. 27; 1989 a. 31, 107.

48.993 Juvenile compact administrator. (1) Under the interstate compact on juveniles, the governor may designate an officer or employe of the department 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. The compact administrator shall serve subject to the pleasure of the governor. If there is a vacancy in the office of compact administrator or in the case of absence or disability, the functions shall be performed by the secretary of health and social services, or other employe designated by the secretary. 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. Those 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; 1989 a. 31, 107.

48.994 Supplementary agreements. The department may enter into supplementary agreements with appropriate officials of other states under s. 48.991 (10). If the supplementary agreement requires or contemplates the use of any institution or facility of this state or the provision of any service by this state, the supplementary agreement has no effect until approved by the department or agency under whose jurisdiction the institution or facility is operated or which shall be charged with the rendering of the service.

History: 1981 c. 390; 1989 a. 31, 107.

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 the petitioner is able to do so, shall order the petitioner to pay all the expenses of returning the juvenile; 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 that person's actual and necessary expenses; and 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, the petitioner 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 the 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.

(4) In the case of a juvenile subject to a petition under s. 48.998, the appropriate court shall arrange for the transportation at the expense of the county in which the violation of criminal law is alleged to have been committed 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 assigned to exercise jurisdiction under this chapter for the county in which the violation of criminal law is alleged to have been committed.

History: 1977 c. 354, 447, 449; 1981 c. 390; 1985 a. 294; 1989 a. 31, 107; 1991 a. 316.

48.996 Compensation. 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 the judge's discretion, allow reasonable compensation in an amount not to exceed the compensation paid to private attorneys under s. 977.08 (4m), to be paid by the county on order of the court.

History: 1991 a. 316; 1993 a. 16.

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.

48.998 Rendition of juveniles alleged to be delinquent. (1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of s. 48.991 (5) and (6) shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in s. 48.991 (5) shall be forwarded by the judge of the court in which the petition has been filed.

History: 1985 a. 294.

48.9985 Interstate adoption agreements. (1) DEFINITIONS. In this section:

(a) "Adoption assistance agreement" means an agreement under s. 48.975 with a child's adoptive parents to provide specified benefits, including medical assistance, to the child, or a similar agreement in writing between an agency of another state and the adoptive parents of a child adopted in that state, if the agreement is enforceable by the adoptive parents.

(b) "Medical assistance" has the meaning given under s. 49.43 (8).

(c) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, the commonwealth of the Northern Mariana Islands or a territory or possession of the United States.

(2) INTERSTATE AGREEMENTS AUTHORIZED. (a) The department may, on behalf of this state, enter into interstate agreements, including the interstate compact on adoption and medical assistance, with agencies of any other states that enter into adoption assistance agreements.

(b) Each interstate agreement shall provide that, upon application by a person who has entered into an adoption assistance agreement with a party state other than the person's state of residence, the state of the person's residence shall provide medical assistance benefits under its own laws to the person's adopted child.

(c) An interstate agreement may also include the following:

1. Procedures for ensuring the continued provision of developmental, child care and other social services to adopted children whose adoptive parents reside in a party state other than the one in which the adoption assistance agreement was entered into.

2. Any other provisions determined by the department and the agency of the other party state to be appropriate for the administration of the interstate agreement.

(d) An interstate agreement is revocable upon written notice by either party state to the other party state but remains in effect for one year after the date of the written notice.

(e) Each interstate agreement shall provide that the medical assistance benefits to which a child is entitled under the provisions of the interstate agreement shall continue to apply until the expiration of the adoption assistance agreement entered into by the adoptive parents in the state in which the adoption took place, whether or not the interstate agreement is revoked under par. (d).

History: 1985 a. 308, 332.