CHAPTER 48

CHILDREN'S CODE

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Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 48, 51, 55 and 58.

NOTE: 1995 Wis. Act 275, which made major revisions of Chapter 48, contains extensive explanatory notes.

SUBCHAPTER I

GENERAL PROVISIONS

48.01 Title and legislative purpose. (1) This chapter may be cited as "The Children's Code". In construing this chapter, the best interests of the child or unborn child shall always be of paramount consideration. This chapter shall be liberally construed to effectuate the following express legislative purposes:

(a) While recognizing that the paramount goal of this chapter is to protect children and unborn children, to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents and the expectant mothers of unborn children, whenever appropriate, in fulfilling their responsibilities as parents or expectant mothers. The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents and the expectant mothers of unborn children in changing any circumstances in the home which might harm the child or unborn child, which may require the child to be placed outside the home or which may require the expectant mother to be taken into custody. The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare 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 safe return to the family.

(ad) 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.

(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the child for the child to be removed from his or her parents, consistent with any applicable law relating to the rights of parents.

(am) To recognize that unborn children have certain basic needs which must be provided for, including the need to develop physically to their potential and the need to be free from physical harm due to the habitual lack of self−control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. It is further recognized that, when an expectant mother of an unborn child suffers from a habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, in order to ensure that the needs of the unborn child, as described in this paragraph, are provided

for, the court may determine that it is in the best interests of the unborn child for the expectant mother to be ordered to receive treatment, including inpatient treatment, for that habitual lack of self−control, consistent with any applicable law relating to the rights of the expectant mother.

(ap) To recognize the compelling need to reduce the harmful financial, societal and emotional impacts that arise and the tremendous burdens that are placed on families and the community and on the health care, social services, educational and criminal justice systems as a result of the habitual lack of self−control of expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, during all stages of pregnancy.

(bg) 1. To ensure that children are protected against the harmful effects resulting from the absence of parents or parent substitutes, from the inability, other than financial inability, of parents or parent substitutes to provide care and protection for their children and from the destructive behavior of parents or parent substitutes in providing care and protection for their children.

2. To ensure that children are provided good substitute parental care in the event of the absence, temporary or permanent inability, other than financial inability, or unfitness of parents to provide care and protection for their children.

(bm) To ensure that unborn children are protected against the harmful effects resulting from the habitual lack of self−control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. To effectuate this purpose and the purpose specified in par. (am), it is the intent of the legislature that the provisions of this chapter that protect unborn children against those harmful effects and that provide for the needs of unborn children, as described in par. (am), shall be construed to apply throughout an expectant mother's pregnancy to the extent that application of those provisions throughout an expectant mother's pregnancy is constitutionally permissible and that expectant mothers who habitually lack self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, be encouraged to seek treatment for that habitual lack of self−control voluntarily when voluntary treatment would be practicable and effective.

(br) To encourage innovative and effective prevention, intervention and treatment approaches, including collaborative community efforts and the use of community−based programs, as significant strategies in planning and implementing legislative, executive and local government policies and programs relating to children and their families and substitute families and to unborn children and their expectant mothers.

(dm) To divert children and unborn children from formal proceedings under this chapter to the extent that this is consistent with protection of children, unborn children and the public safety.

(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.

(gg) To promote the adoption of children into safe and 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 in accordance with this chapter and termination of parental rights is in the best interest of the child.

(gt) To reaffirm that the duty of a parent to support and maintain his or her child continues during any period in which the child may be removed from the custody of the parent.

(2) In proceedings involving an American Indian child, the best interests of the child shall be determined consistent with the Indian child welfare act, 25 USC 1901 to 1963. In this subsection, "American Indian child" means any unmarried person who is under 18 years of age and who is one of the following:

(a) A member of an Indian tribe, as defined in 25 USC 1903 (8).

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

History: 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77, 275; 1997 a. 237, 292; 1999 a. 32.

The "best interests of the child" is a question of law. Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865 (1973).

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

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

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

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

48.02 Definitions. In this chapter, unless otherwise defined:

(1) "Abuse", other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self−control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(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, controlled substances or controlled substance analogs 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, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.

(2d) "Controlled substance" has the meaning given in s. 961.01 (4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2g) "County department" means a county department under s. 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 and ch. 938.

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

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

(5j) "Emotional damage" means harm to a child's psychological or intellectual functioning. "Emotional damage" shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or 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.

(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 or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(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, as provided in s. 48.625 (1).

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

(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 and ch. 938.

(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 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 acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated 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.

(14g) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22 (14).

(15) "Relative" means a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. This relationship shall be by blood, marriage, or adoption.

(15d) "Residential care center for children and youth" means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(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, including a holdover room, licensed by the department under s. 48.66 (1) (a).

(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. "Special treatment or care" also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self−control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. 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.

(19) "Unborn child" means a human being from the time of fertilization to the time of birth.

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 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

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

Under sub. (13), a deceased parent continues to be parent; a deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

A viable fetus is not a "person" within the definition of a child under sub. (2). State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

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

48.023 Guardianship. Except as limited by an order of the court under s. 48.977 (5) (b) or 48.978 (6) (b) 2., 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 or when the child is under the supervision of the department of corrections under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or the supervision of a county department under s. 938.34 (4d) or (4n).

History: 1977 c. 354; 1993 a. 385; 1995 a. 27, 77, 275, 352; 1997 a. 334.

A guardian may not recover for the loss of society and companionship of a ward, nor may the guardian bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999).

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5−99.

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.

When the children's code provides safeguards in addition to those in the Indian child welfare act, those safeguards should be followed. In Re Interest of D.S.P. 166 Wis. 2d 464, 480 N.W.2d 234 (1992).

48.029 Pregnancy testing prohibited. No law enforcement agency, district attorney, corporation counsel, county department, licensed child welfare agency or other person involved in the investigation or prosecution of an allegation that an unborn child has been the victim of or is at substantial risk of abuse may, without a court order, require a person to take a pregnancy test in connection with that investigation or prosecution.

History: 1997 a. 292.

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 and ch. 938, 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; 1995 a. 77.

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 ch. 938 and the office and functions of the judge of the court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter and ch. 938 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; 1995 a. 77.

48.04 Employees of court. 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; 1999 a. 83.

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 department shall provide the court with the services necessary for investigating and supervising child welfare and unborn child welfare cases under this chapter. The department is charged with providing child welfare and unborn child welfare intake and dispositional services and with administration of the personnel and services of the child welfare and unborn child welfare intake and dispositional sections of the department. The department shall include investigative services for all children and unborn children alleged to be in need of protection or services to be provided by the department.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for child welfare matters under this chapter and the department 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.

3. The county board of supervisors does not have authority and may not assert jurisdiction over the disposition of any case, child, unborn child or expectant mother of an unborn child after

a written order is made under s. 48.21 or 48.213 or if a petition is filed under s. 48.25.

(am) 1. All intake workers providing services under this chapter who begin 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 who provide services under this chapter to satisfy the requirements specified under subd. 1.

3. Each intake worker providing services under this chapter whose responsibilities include investigation or treatment of child abuse or neglect or unborn child abuse shall successfully complete additional training in child abuse and neglect and unborn child abuse 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.

(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 employees 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 providing services under this chapter who begin 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 who provide services under this chapter to satisfy the requirements specified under subd. 1.

(c) Each intake worker providing services under this chapter whose responsibilities include investigation or treatment of child abuse or neglect or unborn child abuse shall successfully complete additional training in child abuse and neglect and unborn child abuse 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, the department in a county having a population of 500,000 or more or the 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. 46.495. Counties having a population of less than 500,000 may use funds received under s. 46.495 (1) (d), including county or federal revenue sharing funds allocated to match funds received under s. 46.495 (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; 1995 a. 27; 1997 a. 27, 80, 292; 2001 a. 61.

Cross Reference: See also ch. HSS 49, Wis. adm. code.

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) and the adult expectant mothers of unborn children taken into custody and not released under s. 48.203 (1).

(2) Interview, unless impossible, any child or expectant mother of an unborn child who is taken into physical custody and not released, and when 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. If an adult expectant mother of an unborn child cannot be interviewed, the intake worker shall consult with an adult relative or friend of the adult expectant mother. 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 or the expectant mother of an unborn 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 or the expectant mother of an unborn child is not released, determine where the child or expectant mother 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, request that a petition 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 an alcohol and other drug abuse 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, and unborn children and their expectant mothers, awaiting final disposition under s. 48.355.

(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; 1997 a. 80, 292; 1999 a. 83.

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, or, in a county having a population of 500,000 or more, the department or an agency under contract with the department to provide dispositional services, shall:

(a) Supervise and assist a child and the child's family or the expectant mother of an unborn 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 or for the expectant mother of an unborn child and investigate and develop resources toward that end.

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

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

(2) Except in a county having a population of 500,000 or more, 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. In a county having a population of 500,000 or more, the department or, with the approval of the department, a licensed child welfare agency shall provide services under this section.

(3) A court or county department responsible for disposition staff or, in a county having a population of 500,000 or more, the department 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; 1995 a. 27 ss. 2428m, 2428p, 9126 (19); 1995 a. 77; 1997 a. 27, 292.

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:

(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) THE DEPARTMENT IN POPULOUS COUNTIES. In counties having a population of 500,000 or more, the department may be ordered by the court to provide services for furnishing emergency shelter care to any child whose need therefor is determined by the intake worker under s. 48.205. The court may authorize the department to appoint members of the 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. 48.345 (6) and if s. 48.362 (4) applies or to provide special treatment or care to the expectant mother of an unborn child if special treatment or care has been ordered under s. 48.347 (4) and if s. 48.362 (4) applies.

(5) COURT−APPOINTED SPECIAL ADVOCATE PROGRAM. (a) *Memorandum of understanding.* The court may obtain the services of a court−appointed special advocate program that has been recognized by the chief judge of the judicial administrative district. A chief judge of a judicial administrative district may recognize a court−appointed special advocate program by entering into a memorandum of understanding with the court−appointed special advocate program that specifies the responsibilities of the court−appointed special advocate program and of a court−appointed special advocate designated under s. 48.236 (1). The memorandum of understanding shall specify that the court−appointed special advocate program is responsible for selecting, training, supervising and evaluating the volunteers and employees of the program who are authorized to provide court−appointed special advocate services as provided in pars. (b) to (d), that, in addition to any other activities specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court−appointed special advocate services may be designated to perform any of the activities specified in s. 48.236 (3) (a) to (c) and that, in addition to any other authority specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court−appointed special advocate services may be authorized to exercise any of the authority specified in s. 48.236 (4) (a) and (b), unless the parties to the memorandum of understanding determine that a variance from the requirements of pars. (b) to (d), the activities specified in s. 48.236 (3) (a) to (c) or the authority specified in s. 48.236 (4) (a) and (b) is necessary for the efficient administration of the program.

(b) *Selection.* 1. A court−appointed special advocate program may select a person to provide court−appointed special advocate services if the person is 21 years of age or older, demonstrates an interest in the welfare of children, undergoes a satisfactory background investigation as provided under subd. 2., completes the training required under par. (c) and meets any other qualifications required by the court−appointed special advocate program. A court−appointed special advocate program may refuse to permit to provide court−appointed special advocate services any person whose provision of those services might pose a risk, as determined by the court−appointed special advocate program, to the safety of any child.

2. On receipt of an application from a prospective court−appointed special advocate, the court−appointed special advocate program, with the assistance of the department of justice, shall conduct a background investigation of the applicant. If the court−appointed special advocate program determines that any information obtained as a result of the background investigation provides a reasonable basis for further investigation, the court−appointed special advocate program may require the applicant to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the applicant's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identification of the applicant and obtaining the applicant's criminal arrest and conviction record. The court−appointed special advocate program shall keep confidential all information received from the department of justice and the federal bureau of investigation under this subdivision.

(c) *Training.* A court−appointed special advocate program shall require a volunteer or employee of the program selected under par. (b) to complete a training program before the volunteer or employee may be designated as a court−appointed special advocate under s. 48.236 (1). The training program shall include instruction on recognizing child abuse and neglect, cultural competency, as defined in s. 48.982 (1) (bm), child development, the procedures of the court, permanency planning, the activities of a court−appointed special advocate under s. 48.236 (3) and information gathering and documentation, and shall include observation of a proceeding under s. 48.13. A court−appointed special advocate program shall also require each volunteer and employee of the program selected under par. (b) to complete continuing training annually.

(d) *Supervision and evaluation.* The supervisory support staff of a court−appointed special advocate program shall be easily accessible to the volunteers and employees of the program who are authorized to provide court−appointed special advocate services, shall hold regular case conferences with those volunteers and employees to review case progress and shall conduct annual performance evaluations of those volunteers and employees. A court−appointed special advocate program shall provide its staff

and volunteers with written guidelines describing the policies, practices and procedures of the program and the responsibilities of a volunteer or employee of the program who is authorized to provide court−appointed special advocate services.

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; 1995 a. 27, 77; 1997 a. 27, 292; 1999 a. 149.

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 a child or expectant mother of an unborn child under the person's supervision and shall report on that conduct and condition as the judge directs.

(2) Any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 and 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking 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) Any person authorized to provide or providing intake or dispositional services for the court under s. 48.067 or 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking the expectant mother of an unborn child into physical custody when the expectant mother comes voluntarily or when there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

History: 1975 c. 302, 421; 1977 c. 354; 1979 c. 300; 1985 a. 320; 1991 a. 39, 316; 1995 a. 27, 77; 1997 a. 292.

A judge may order the department to provide information on foster care placements in a county. In Interest of J. A. 138 Wis. 2d 483, 406 N.W.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:

(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, 48.133 or 48.977. 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; 1995 a. 77, 275; 1997 a. 292.

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 request to file a petition is made 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; 1995 a. 77; 1997 a. 80.

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

48.13 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;

(2m) Whose parent has relinquished custody of the child under s. 48.195 (1);

(3) Who has been the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self−inflicted or inflicted by another;

(3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self−inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;

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

(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 under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance 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, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

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

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

History: 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27, 363, 395, 474; 1995 a. 77, 275; 1997 a. 80; 2001 a. 2.

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

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

A jury verdict that children are in need of protection or services requires a separate verdict question for each of the specific jurisdictional grounds alleged. Interest of Lauran F. 194 Wis. 2d 283, 533 N.W.2d 812 (1995).

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court does not have jurisdiction over a fetus under this section. State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by sub. (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890.

48.133 Jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children. The court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services which can be ordered by the court whose expectant mother habitually lacks self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self−control. The court also has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

History: 1997 a. 292.

48.135 Referral of children and expectant mothers of unborn children to proceedings under chapter 51 or 55. **(1)** If a child alleged to be in need of protection or services or a child expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the child or child expectant mother is developmentally disabled, mentally ill or drug dependent or suffers from alcoholism, the court may proceed under ch. 51 or 55. If an adult expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the adult expectant mother is drug dependent or suffers from alcoholism, the court may proceed under ch. 51.

(2) Except as provided in ss. 48.19 to 48.21 and s. 48.345 (14), 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. Except as provided in ss. 48.193 to 48.213 and s. 48.347 (6), any voluntary or involuntary admissions, placements or commitments of an adult expectant mother of an unborn child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51.

History: 1977 c. 354; 1977 c. 418 s. 928 (55) (c); 1977 c. 428 s. 6; 1979 c. 300; 1987 a. 339; 1995 a. 77; 1997 a. 292.

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, 48.839 (4) (a), 48.977 and 48.978 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.

(5) Proceedings under chs. 51 and 55 which apply to minors and proceedings under ch. 51 which apply to the adult expectant mothers of unborn children, if those adult expectant mothers appear to be drug dependent or to suffer from alcoholism.

(6) Consent to marry under s. 765.02.

(7) Appeals under s. 115.80 (7).

(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.

(11) Granting visitation privileges under s. 880.155.

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; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334.

If two actions between the same parties, on the same subject, to test the same rights are brought in different courts with concurrent jurisdiction, it is error for the second court to assume jurisdiction. Interest of Tiffany W. & Myokra W. 192 Wis. 2d 407, 532 N.W.2d 135 (Ct. App. 1995).

48.15 Jurisdiction of other courts to determine legal custody. Nothing contained in ss. 48.13, 48.133 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 and ch. 938 is paramount in all cases involving children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn children and their expectant mothers alleged to come within the provisions of ss. 48.133 and 48.14 (5).

History: 1977 c. 449; 1981 c. 289; 1995 a. 77; 1997 a. 292.

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.

48.185 Venue. (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.133, 48.135 and 48.14 (1) to (9) may be in any of the following: the county where the child or the expectant mother of the unborn child resides or the county where the child or expectant mother is present. 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, 48.365 or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345 or 48.347, 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 or the expectant mother of the unborn 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, parent or expectant mother.

History: 1977 c. 354; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491; 1995 a. 77, 275; 1997 a. 80, 292.

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

SUBCHAPTER IV

HOLDING A CHILD OR AN EXPECTANT MOTHER 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 (1).

(cm) An order of the judge if made upon a showing satisfactory to the judge that the child is an expectant mother, that due to the child expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the child expectant mother is taken into custody and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the child expectant mother be held in custody under s. 48.207 (1).

(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.

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.

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 is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

(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; 1995 a. 27, 77; 1997 a. 292.

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court may not order protective custody of a fetus by requiring custody of the mother. State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

48.193 Taking an adult expectant mother into custody. (1) An adult expectant mother of an unborn 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 due to the adult expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the adult expectant mother is taken into custody and that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the adult expectant mother be held in custody under s. 48.207 (1m).

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

1. A capias or warrant for the apprehension of the adult expectant mother has been issued in this state or in another state.

2. There is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the adult expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the adult expectant mother is taken into custody.

3. The adult expectant mother has violated the conditions of an order under s. 48.213 (3) or the conditions of an order for temporary physical custody by an intake worker.

(2) When an adult expectant mother of an unborn child is taken into physical custody as provided in this section, the person taking the adult expectant mother into custody shall immediately attempt to notify an adult relative or friend of the adult expectant mother by the most practical means. The person taking the adult expectant mother into custody shall continue such attempt until an adult relative or friend is notified, or the adult expectant mother is delivered to an intake worker under s. 48.203 (2), whichever occurs first. If the adult expectant mother is delivered to the intake worker before an adult relative or friend is notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until an adult relative or friend of the adult expectant mother is 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: 1997 a. 292.

48.195 Taking a newborn child into custody. (1) TAKING CHILD INTO CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger may be taken into custody under circumstances in which a parent of the child relinquishes custody of the child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the child. If a parent who wishes to relinquish custody of his or her child under this subsection is unable to travel to a sheriff's office, police station, fire station, hospital, or other place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent may dial the telephone number "911" or, in an area in which the telephone number "911" is not available, the number for an emergency medical service provider, and the person receiving the call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under this subsection shall take any action necessary to protect the health and safety of the child, shall, within 24 hours after taking the child into custody, deliver the child to the intake worker under s. 48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

(2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph, a parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment have the right to remain anonymous. The exercise of that right shall not affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member

performs his or her duties under this section. No person may induce or coerce or attempt to induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

(b) A parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment may leave the presence of the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the child at any time, and no person may follow or pursue the parent or person assisting the parent, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(c) No officer, employee, or agent of this state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a child under sub. (1) or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1) shall keep that information confidential and may not disclose that information, except to the following persons:

1. The birth parent of the child, if the birth parent has waived his or her right under par. (a) to remain anonymous, or the adoptive parent of the child, if the child is later adopted.

2. Appropriate staff of the department, county department, or licensed child welfare agency that is providing services to the child.

3. A person authorized to provide or providing intake or dispositional services under s. 48.067, 48.069, or 48.10.

4. An attending physician for purposes of diagnosis and treatment of the child.

5. The child's foster parent, treatment foster parent, or other person having physical custody of the child.

6. A court conducting proceedings under s. 48.21, proceedings relating to a petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI or VIII relating to the child, the county corporation counsel, district attorney, or agency legal counsel representing the interests of the public in those proceedings, or the guardian ad litem representing the interests of the child in those proceedings.

7. A tribal court, or other adjudicative body authorized by an American Indian tribe or band to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the American Indian tribe or band in those proceedings, or an attorney representing the interests of the child in those proceedings.

(3) INFORMATION FOR PARENT. (a) Subject to par. (b), a law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child the maternal and child health toll−free telephone number maintained by the department under 42 USC 705 (a) (5) (E).

(b) The decision whether to accept the information made available under par. (a) is entirely voluntary on the part of the parent. No person may induce or coerce or attempt to induce or coerce any parent into accepting that information.

(4) IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not to accept any information under sub. (3) (b) and immunity from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

(b) Any law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) is immune from any civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but is not immune from any civil or criminal liability for any act or omission occurring in subsequently providing care for the child.

(c) In any civil or criminal proceeding, the good faith of a person specified in par. (a) or (b) is presumed. This presumption may be overcome only by clear and convincing evidence.

(5) MEDICAL ASSISTANCE ELIGIBILITY. A child who is taken into custody under sub. (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

(6) RULES. The department shall promulgate rules to implement this section. In promulgating those rules, the department shall consider the different circumstances under which a parent might relinquish custody of a child under sub. (1). The rules shall include rules prescribing a means by which a parent who relinquishes custody of his or her child under sub. (1) may, until the granting of an order terminating parental rights, choose to be identified as the child's parent.

History: 2001 a. 2.

Cross Reference: See also ch. HFS 39, Wis. adm. code.

48.20 Release or delivery of child from custody. (2) (ag) Except as provided in pars. (b) to (d), 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.

(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.

(3) If the child is released under sub. (2) (b) to (d), 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.

(4m) If the child is an expectant mother and if the unborn child or child expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child expectant mother

into physical custody, the intake worker or other appropriate person shall deliver the child expectant mother 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 who is alleged to be in need of protection or services and who is 12 years of age or older 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 (1) 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

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, 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 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian or legal custodian. The intake worker shall notify both the child and the child's parent, guardian or legal custodian. When the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad litem, shall receive the same notice about the whereabouts of the child expectant mother, about the reasons for holding the child expectant mother in custody and about the detention hearing as the child expectant mother and her parent, guardian or legal custodian. The intake worker shall notify the child expectant mother, her parent, guardian or legal custodian and the unborn child, by the unborn child's guardian ad litem.

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

48.203 Release or delivery of adult expectant mother from custody. (1) A person taking an adult expectant mother of an unborn child into custody shall make every effort to release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the person taking the adult expectant mother into custody may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(2) If the adult expectant mother is not released under sub. (1), the person who took the adult expectant mother into custody shall arrange in a manner determined by the court and law enforcement agencies for the adult expectant mother 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 adult expectant mother was taken into physical custody and shall give the adult expectant mother 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.

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

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

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

(6) (a) When an adult expectant mother is interviewed by an intake worker, the intake worker shall inform the adult expectant mother of her right to counsel.

(b) The intake worker shall review the need to hold the adult expectant mother in custody and shall make every effort to release the adult expectant mother from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the adult expectant mother or to continue to hold the adult expectant mother in custody on the criteria specified in s. 48.205 (1m) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the intake worker may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(7) If an adult expectant mother is held in custody, the intake worker shall notify the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, of the reasons for holding the adult expectant mother in custody, the time and place of the detention hearing required under s. 48.213, the nature

and possible consequences of that hearing, and the right to present and cross−examine witnesses at the hearing.

History: 1997 a. 292.

48.205 Criteria for holding a child or expectant mother in physical custody. (1) A child may be held under s. 48.207 (1), 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 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 neglecting, refusing, unable or unavailable 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.

(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.

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207 (1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(2) The criteria for holding a child or the expectant mother of an unborn 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; 1995 a. 27, 77, 275; 1997 a. 292; 1999 a. 83.

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

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

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(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) or (4m).

(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.

(1m) An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community−based residential facility, as defined in s. 50.01 (1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33 (2) (a) and (c), or a physician's office if the adult expectant mother is held under s. 48.203 (3).

(d) A place listed in s. 51.15 (2) if the adult expectant mother is held under s. 48.203 (4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203 (5).

(2) (a) If a facility listed in sub. (1) (b) to (k) is used to hold a child in custody, or if supervisory services of a home detention program are provided to a child held under sub. (1) (a), the authorized rate of the facility for the care of the child or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the child.

(b) If a facility listed in sub. (1m) (b) to (e) is used to hold an expectant mother of an unborn child in custody, or if supervisory services of a home detention program are provided to an expectant mother held under sub. (1m) (a), the authorized rate of the facility for the care of the expectant mother or the authorized rate for those

supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the expectant mother.

(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; 1997 a. 27, 292; 1999 a. 9.

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:

(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 (1) or by the judge or a circuit court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77; 1997 a. 292; 2001 a. 61.

Courts may hold juveniles in contempt of court, but only under the criteria under s. 48.205 and this section. 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.

History: 1977 c. 354; 1989 a. 31; 1993 a. 98; 1995 a. 77.

Cross Reference: See also s. DOC 346.01, Wis. adm. code.

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 a circuit court commissioner within 48 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. 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 48 hours, excluding Saturdays, Sundays, and legal holidays, 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 for good cause shown.

(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 circuit court commissioner for an additional 72 hours from the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or to others, that probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care or, if the child is an expectant mother who was taken into custody under s. 48.19 (1) (cm) or (d) 8., that probable cause exists to believe that there is a substantial risk that if the child expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the child's immediate release from custody.

(3) PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES AND UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR CHILD EXPECTANT MOTHERS. (ag) Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.13 or an unborn child and a child expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(am) The parent, guardian, or legal custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, or any other interested party for good cause shown.

(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. If the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., a copy of the petition shall also be given to the unborn child, through the unborn child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian, to the child if he or she is 12 years of age or older and, if the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn child, through the unborn child's guardian ad litem, 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 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 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 circuit court commissioner finds that the child should be continued in custody under the criteria of s. 48.205, he or she shall enter one of the following orders:

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

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

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

(b) An order relating to a child held in custody outside of his or her home shall also include all of the following:

1. A finding that continued placement of the child in his or her home would be contrary to the welfare of the child. Unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, the order shall in addition include a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to make it possible for the child to return safely home or, if for good cause shown sufficient information is not available for the judge or circuit court commissioner to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home, a finding as to whether those reasonable efforts were made to make it possible for the child to return safely home and an order for the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under the custody order to file with the court sufficient information for the judge or circuit court commissioner to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home by no later than 5 days after the date of the order.

2. If the child is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the child is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the child.

3. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

(c) The judge or circuit court commissioner shall make the findings specified in par. (b) 1. and 3. on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1. or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) 1. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(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 place the child in 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 circuit court commissioner determines that the best interests of the child and the public are served or, in the case of a child expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., that the best interests of the unborn 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; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

The period under sub. (1) (a) runs from the time the intake worker decides to hold the child. Curtis W. v. State, 192 Wis. 2d 719, 531 N.W.2d 633 (Ct. App. 1995).

48.213 Hearing for adult expectant mother in custody.

(1) HEARING; WHEN HELD. (a) If an adult expectant mother of an unborn child who has been taken into custody is not released under s. 48.203, a hearing to determine whether the adult expectant mother shall continue to be held in custody under the criteria of s. 48.205 (1m) shall be conducted by the judge or a circuit court commissioner within 48 hours after the time that the decision to hold the adult expectant mother 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 when an adult expectant mother is taken into custody under s. 48.193 (1) (b) or (d) 1. or 3., in which case a written statement of the reasons for holding the adult expectant mother in custody shall

be substituted if the petition is not filed. If no hearing has been held within those 48 hours, excluding Saturdays, Sundays and legal holidays, or if no petition or statement has been filed at the time of the hearing, the adult expectant mother shall be released except as provided in par. (b).

(b) If no petition has been filed by the time of the hearing, an adult expectant mother of an unborn child may be held in custody with the approval of the judge or circuit court commissioner for an additional 72 hours after the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that there is a substantial risk that if the adult expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the adult expectant mother's immediate release from custody.

(2) PROCEEDINGS CONCERNING UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR ADULT EXPECTANT MOTHERS. (a) Proceedings concerning an unborn child and an adult expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(b) The adult expectant mother may waive the hearing under this section. After any waiver, a hearing shall be granted at the request of any interested party.

(c) A copy of the petition shall be given to the adult expectant mother, and to the unborn child, through the unborn child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the adult expectant mother and unborn child in accordance with s. 48.203 (7).

(d) Prior to the commencement of the hearing, the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, 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 confront and cross−examine witnesses and the right to present witnesses.

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

(3) CONTINUATION OF CUSTODY. If the judge or circuit court commissioner finds that the adult expectant mother should be continued in custody under the criteria of s. 48.205 (1m), the judge or circuit court commissioner shall enter one of the following orders:

(a) Release the adult expectant mother and impose reasonable restrictions on the adult expectant mother's travel, association with other persons or places of abode during the period of the order, including a condition requiring the adult expectant mother to return to other custody as requested; or subject the adult expectant mother to the supervision of an agency agreeing to supervise the adult expectant mother. Reasonable restrictions may be placed upon the conduct of the adult expectant mother which may be necessary to ensure the safety of the unborn child and of the child when born.

(b) Order the adult expectant mother to be held in an appropriate manner under s. 48.207 (1m).

(4) ORDERS IN WRITING. All orders to hold an adult expectant mother of an unborn child in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(5) AMENDMENT OF ORDER. An order under sub. (3) (a) imposing restrictions on an adult expectant mother of an unborn child may at any time be amended, with notice, so as to place the adult expectant mother in another form of custody for failure of the adult expectant mother to conform to the conditions originally imposed.

(6) INFORMAL DISPOSITION. If the judge or circuit court commissioner determines that the best interests of the unborn child and the public are served, the judge or circuit court commissioner 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: 1997 a. 292; 2001 a. 61.

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.

48.227 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 a circuit 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. 48.13 to 48.14, excluding s.

48.14 (8), or under ss. 938.12 to 938.14, a hearing may be held under s. 48.21 or 938.21.

(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. 48.13, 48.133, 938.12 or 938.13, the child shall be released from the home. If a petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child may be held in temporary physical custody under ss. 48.20 to 48.21 or 938.20 to 938.21.

(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; 1995 a. 77; 1997 a. 292; 2001 a. 61.

48.23 Right to counsel. (1g) DEFINITION. In 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 or court−appointed special advocate for any party in the same proceeding.

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

(a) Any child 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.

(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. Whenever a child 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.

(2m) RIGHT OF EXPECTANT MOTHER TO COUNSEL. (a) When an unborn child is alleged to be in need of protection or services under s. 48.133, the expectant mother of the unborn child, if the expectant mother is a child, shall be represented by counsel and may not waive counsel.

(b) If a petition under s. 48.133 is contested, no expectant mother may be placed outside of her home unless the expectant mother is represented by counsel at the fact−finding hearing and subsequent proceedings. If the petition is not contested, the expectant mother may not be placed outside of her home unless the expectant mother is represented by counsel at the hearing at which the placement is made. An adult expectant mother, however, may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court may place the adult expectant mother outside of her home even though the adult expectant mother was not represented by counsel.

(c) For an expectant mother under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(3) POWER OF THE COURT TO APPOINT COUNSEL. Except in proceedings under s. 48.13, 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. The court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.

(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 may not act as counsel for any other party or any governmental or social agency involved in the proceeding and may not act as court−appointed special advocate for the child in the proceeding.

(4) PROVIDING COUNSEL. In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly and voluntarily waived, the court shall refer the child 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 child 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) or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer the parent or adult expectant mother 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 inde-

pendent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

(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.

History: 1977 c. 354, 355, 447, 449; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77; 1997 a. 292; 1999 a. 9, 149; 2001 a. 103.

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

The court erred by failing to inform the parents of their right to a jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 342 N.W.2d 410 (1984).

Neither a temporary custody order nor a custodial interrogation were proceedings under sub. (1) (a) [now (1m) (a)]. State v. Woods, 117 Wis. 2d 701, 345 N.W.2d 457 (1984).

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

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

The prohibition in sub. (3) against appointing counsel for a party other than the child is unconstitutional. Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996), 95−2757.

Sub. (4) does not say in cases other than those under s. 48.375 that appointment of counsel does not continue after an appeal has been filed. Section 809.85 provides otherwise. Juneau County Department of Human Services v. James B. 2000 WI App 86, 234 Wis. 2d 406, 610 N.W.2d 144.

Under *Joni B.*, juvenile courts have discretionary authority to appoint counsel for parents in CHIPS cases. When a parent requests counsel or when circumstances raise a reasonable concern that the parent will not be able to provide meaningful self−representation, the court must exercise that discretion. State v. Tammy L.D. 2000 WI App 200, 238 Wis. 2d 516, 617 N.W.2d 894.

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, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of a proceeding under s. 48.977 or 48.978.

(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.

(f) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any unborn child alleged or found to be in need of protection or services.

(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, who appears as counsel or court−appointed special advocate in a proceeding on behalf of any party or who is a relative or representative of an interested party in a proceeding may be appointed guardian ad litem in that proceeding.

(3) DUTIES AND RESPONSIBILITIES. (a) The guardian ad litem shall be an advocate for the best interests of the person or unborn child 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 that person or the positions of others as to the best interests of that person or unborn child. If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of that 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.

(b) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. 48.13 or for an unborn child who is the subject of a proceeding under s. 48.133 shall do all of the following:

1. Unless granted leave by the court not to do so, personally, or through a trained designee, meet with the child or expectant mother of the unborn child, assess the appropriateness and safety of the environment of the child or unborn child and, if the child is old enough to communicate, interview the child and determine the child's goals and concerns regarding his or her placement.

2. Make clear and specific recommendations to the court concerning the best interest of the child or unborn child at every stage of the proceeding.

(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.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7).

7m. Bring an action or motion for the determination of the child's paternity under s. 767.45.

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).

(4m) MATTERS INVOLVING UNBORN CHILD IN NEED OF PROTECTION OR SERVICES. (a) In any matter involving an unborn 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) after the child is born.

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 after the child is born.

3m. Petition for a commitment of the expectant mother of the unborn child under ch. 51 as specified in s. 48.14 (5).

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 after the child is born.

7. Petition for relief from a judgment terminating parental rights under s. 48.46 after the child is born.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7) after the child is born.

7m. Bring an action or motion for the determination of the child's paternity under s. 767.45 after the child is born.

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 or unborn child 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. (a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem under par. (b) or (c) 2., the amount ordered may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) Subject to par. (c), the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court may order either or both of the parents of the child to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay because a parent is indigent, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c) 1. In an uncontested termination of parental rights and adoption proceeding under s. 48.833, the court shall order the agency that placed the child for adoption to pay the compensation of the child's guardian ad litem.

2. In an uncontested termination of parental rights and adoption proceeding under s. 48.835 or 48.837, the court shall order the proposed adoptive parents to pay the compensation of the child's guardian ad litem. If the proposed adoptive parents are indigent, the court may order the county of venue to pay the compensation, in whole or in part, and may order the proposed adoptive parents to reimburse the county, in whole or in part, for the payment.

(d) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a child under this chapter, the court may order a parent, agency or proposed adoptive parent to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. (b) or (c).

(e) If the court orders a parent or proposed adoptive parent to reimburse a county under par. (b) or (c) 2., the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent or proposed adoptive parent who is responsible for the reimbursement.

(f) The court may enforce its orders under this subsection by means of its contempt powers.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395; 1995 a. 27, 275; 1997 a. 237, 292, 334; 1999 a. 149.

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]

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

A court's power to appropriate compensation for court−appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02, or a higher rate when necessary, to secure effective counsel. Friedrich v. Dane County Circuit Ct. 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

Except as provided in sub. (8), a guardian ad litem appointed under ch. 48 is to be paid by the county, regardless of the type of action or the parent's ability to pay. Michael T. v. Briggs, 204 Wis. 2d 401, 555 N.W.2d 651 (Ct. App. 1996).

48.236 Court−appointed special advocate. (1) DESIGNATION. In any proceeding under s. 48.13 in which the court finds that providing the services of a court−appointed special advocate would be in the best interests of the child, the court may request a court−appointed special advocate program to designate a person who meets the qualifications specified in sub. (2) as a court−appointed special advocate to undertake the activities specified in sub. (3). A court−appointed special advocate does not become a party to the proceeding and, as a nonparty, may not make motions or call or cross−examine witnesses. A designation under this subsection terminates when the jurisdiction of the court over the child under s. 48.13 terminates, unless the court discharges the court−appointed special advocate sooner.

(2) QUALIFICATIONS. A court−appointed special advocate shall be a volunteer or employee of a court−appointed special advocate program who has been selected and trained as provided in the memorandum of understanding entered into under s. 48.07 (5) (a). No person who is a party in a proceeding, who appears as counsel or guardian ad litem in a proceeding on behalf of any party or who is a relative or representative of a party in a proceeding may be designated as a court−appointed special advocate in that proceeding.

(3) ACTIVITIES. A court−appointed special advocate may be designated under sub. (1) to perform any of the following activities:

(a) Gather information and make observations about the child for whom the designation is made, the child's family and any other person residing in the same home as the child and provide that information and those observations to the court in the form of written reports or, if requested by the court, oral testimony.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child's family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child's family under a consent decree, dispositional order or permanency plan is providing those services; and, based on that regular contact and monitoring, provide information to the court in the form of written reports or, if requested by the court, oral testimony.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(4) AUTHORITY. A court that requests a court−appointed special advocate program to designate a court−appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court−appointed special advocate to do any of the following:

(a) Inspect any reports and records relating to the child who is the subject of the proceeding, the child's family and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1), court records under ss. 48.396 (2) (a) and 938.396 (2) (a), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r. and pupil records under s. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court−appointed special advocate to inspect the report or record on presentation by the court−appointed special advocate of a copy of the order. A court−appointed special advocate that obtains access to a report or record described in this paragraph shall keep the information contained in the report or record confidential and may disclose that information only to the court. If a court−appointed special advocate discloses any information to the court under this paragraph, the court−appointed special advocate shall also disclose that information to all parties to the proceeding. If a court−appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court−appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(b) Observe the child who is the subject of the proceeding and the child's living environment and, if the child is old enough to communicate, interview the child; interview the parent, guardian, legal custodian or other caregiver of the child who is the subject of the proceeding and observe that person's living environment; and interview any other person who might possess any information relating to the child and the child's family that is relevant to the subject of the proceeding. A court−appointed special advocate may observe or interview the child at any location without the permission of the child's parent, guardian, legal custodian or other caregiver if necessary to obtain any information that is relevant to the subject of the proceeding, except that a court−appointed special advocate may enter a child's home only with the permission of the child's parent, guardian, legal custodian or other caregiver or after obtaining a court order permitting the court−appointed special advocate to do so. A court−appointed special advocate who obtains any information under this paragraph shall keep the information confidential and may disclose that information only to the court. If a court−appointed special advocate discloses any information to the court under this paragraph, the court−appointed special advocate shall also disclose that information to all parties to the proceeding. If a court−appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court−appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(c) Exercise any other authority that is consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(5) IMMUNITY FROM LIABILITY. A volunteer court−appointed special advocate designated under sub. (1) or an employee of a court−appointed special advocate program recognized under s. 48.07 (5) is immune from civil liability for any act or omission of the volunteer or employee occurring while acting within the scope of his or her activities and authority as a volunteer court−appointed special advocate or employee of a court−appointed special advocate program.

History: 1999 a. 149.

SUBCHAPTER V

PROCEDURE

48.24 Receipt of jurisdictional information; intake inquiry. (1) Information indicating that a child or an unborn child should be referred to the court as in need of protection or services 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 or unborn 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, or the adult expectant mother of an unborn child that she, 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 or to the adult expectant mother of the unborn child. If sub. (2m) applies,

the intake worker shall conduct a multidisciplinary screen under s. 48.547 if the child or expectant mother 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 an alcohol and other drug abuse program under s. 48.547, a multidisciplinary screen shall be conducted for:

2. Any child alleged to be 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.

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.

6. Any expectant mother 12 years of age or over who requests and consents to a multidisciplinary screen.

(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 or unborn 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 request 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. If a law enforcement officer has made a recommendation concerning the child, or the unborn child and the expectant mother of the unborn 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 or unborn 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. 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).

History: 1975 c. 430; 1977 c. 354; 1979 c. 300, 331, 355, 359; 1987 a. 339; 1989 a. 31, 56; 1993 a. 98; 1995 a. 77, 275, 448; 1997 a. 292.

Under the facts of the case, sub. (5) did not mandate dismissal although referral was not made within 40 days. In re J. L. W. 143 Wis. 2d 126, 420 N.W.2d 398 (Ct. App. 1988).

Under sub. (1), "information indicating that a child should be referred to the court" 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 Wis. 2d 754, 465 N.W.2d 520 (Ct. App. 1990).

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

Under sub. (2) (b), a parent is not be required to cooperate, and a refusal to cooperate cannot be used as evidence supporting a CHIPS petition. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307.

The receipt of a phone message calling a county social service agency's attention to specific abuse, combined with specific information about the abuse, which the agency labelled a referral, constituted the "receipt of referral information" under sub. (5) and triggered the 40−day period for requesting that a petition be filed. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307.

48.243 Basic rights: duty of intake worker. (1) Before conferring with the parent, expectant mother or child during the intake inquiry, the intake worker shall personally inform parents, expectant mothers 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 of all of the following:

(a) What allegations could be in the petition.

(b) The nature and possible consequences of the proceedings.

(c) The right to remain silent and the fact that silence of any party may be relevant.

(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.

(h) The right to have the allegations of the petition proved by clear and convincing evidence.

(3) If the child or expectant mother has not had a hearing under s. 48.21 or 48.213 and was not present at an intake conference under s. 48.24, the intake worker shall inform the child, parent, guardian and legal custodian, or expectant mother, as appropriate, of the basic rights provided under this section. The 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, legal custodian or adult expectant mother sufficient time to prepare for the plea hearing. This subsection does not apply to cases of informal disposition under s. 48.245.

(4) This section does not apply if the child or expectant mother was present at a hearing under s. 48.21 or 48.213.

History: 1977 c. 354; 1979 c. 300; 1985 a. 311; 1987 a. 27; 1995 a. 27, 77; 1997 a. 35, 292.

A CHIPS proceeding is not a criminal proceeding within the meaning of the 5th amendment. *Miranda* warnings are not required to be given to the CHIPS petition subject, even though the individual is in custody and subject to interrogation, in order for the subject's statements to be admissible. State v. Thomas J.W. 213 Wis. 2d 264, 570 N.W.2d 586 (Ct. App. 1997)

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 or unborn child nor of the public require filing of a petition for circumstances relating to ss. 48.13 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; or upon consent of the child expectant mother, her parent, guardian and legal custodian and the unborn child, by the unborn child's guardian ad litem; or upon consent of the adult expectant mother and the unborn child, by the unborn child's guardian ad litem.

(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 or that the adult expectant mother appear 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 rehabilitation, protection or care of the child or that the expectant mother abide by such obligations as will tend to ensure the protection or care of the unborn child and the rehabilitation of the expectant mother.

3. That the child or expectant mother 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 use of alcohol beverages, controlled substances or controlled substance analogs by the child or expectant mother 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 or expectant mother is at risk of having needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects.

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

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

(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, or the adult expectant mother, shall execute an informed consent form that indicates that they are, or that she is, voluntarily and knowingly entering into an informal disposition agreement for the provision of alcohol and other drug abuse outpatient treatment.

(2r) If an informal disposition is based on allegations that a child or an unborn child is in need of protection or services, the intake worker may, after giving written notice to the child and the child's parent, guardian and legal custodian and their counsel, if any, or after giving written notice to the child expectant mother, her parent, guardian and legal custodian and their counsel, if any, and the unborn child by the unborn child's guardian ad litem, or after giving written notice to the adult expectant mother, her counsel, if any, and the unborn child, by the unborn child's guardian ad litem, extend the informal disposition for up to an additional 6 months unless the child or the child's parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or the adult expectant mother or the unborn child by the unborn child's guardian ad litem, objects to the extension. If the child or the child's parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or the adult expectant mother or the unborn child by the unborn child's guardian ad litem, objects to the extension, the intake worker may recommend to the district attorney or corporation counsel that a petition be filed under s. 48.13 or 48.133. An extension under this subsection may be granted only once for any informal disposition. An extension under this subsection of an informal disposition relating to an unborn child who is alleged to be in need of protection or services may be granted after the child is born.

(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, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, 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, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, 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 request the district attorney or corporation counsel to file a petition. If the informal disposition is terminated the intake worker may request the district attorney or corporation counsel to file a petition.

(5) Informal disposition shall be terminated upon the request of the child, parent, guardian or legal custodian, upon request of the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or upon the request of the adult expectant mother or the unborn child by the unborn child's guardian ad litem.

(5m) An informal disposition is terminated if the district attorney or corporation counsel files a 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 request 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, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, in writing, and no petition may be filed 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; 1995 a. 24, 77, 275, 448; 1997 a. 80, 292.

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. The district attorney, corporation counsel or other appropriate official specified under s. 48.09 may file the petition if the proceeding is under s. 48.13 or 48.133. 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 counsel or guardian ad litem for an expectant mother or the guardian ad litem for an unborn child may file a petition under s. 48.133. 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) If the proceeding is brought under s. 48.13 or 48.133, 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 accompa-

nied 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.

(3) If the district attorney, 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.

(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; 1995 a. 77; 1997 a. 292.

"Good cause" under sub. (2) is determined by first considering the best interests of the child. Additional factors are whether: 1) the party seeking the enlargement of time has acted in good faith; 2) the opposing party is not prejudiced; and 3) the dilatory party took prompt action to remedy the situation. In Interest of F. E. W. 143 Wis. 2d 856, 422 N.W.2d 893 (Ct. App. 1988).

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

In a case referred by the district attorney of one county to another county, each district attorney had 20 days under sub. (2) to act following the respective referrals by the intake workers of each county. State v. Everett, 231 Wis. 2d 616, 605 N.W.2d 633 (Ct. App. 1999).

48.255 Petition; form and content. (1) A petition initiating proceedings under this chapter, other than a petition under s. 48.133, 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.

(cm) Whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(e) If the child is alleged to come within the provisions of s. 48.13 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.

(f) If the child is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and to make it possible for the child to return safely home.

(1m) A petition initiating proceedings under s. 48.133 shall be entitled "In the interest of (J. Doe), an unborn child, and (expectant mother's name), the unborn child's expectant mother" and shall set forth with specificity:

(a) The estimated gestational age of the unborn child.

(b) The name, birth date and address of the expectant mother.

(bm) The names and addresses of the parent, guardian, legal custodian or spouse, if any, of the expectant mother, if the expectant mother is a child, the name and address of the spouse, if any, of the expectant mother, if the expectant mother is an adult, or, if no such person can be identified, the name and address of the nearest relative of the expectant mother.

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

(d) Whether the unborn child, when born, may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963.

(e) Reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court under s. 48.133 and to provide reasonable notice of the conduct or circumstances to be considered by the court, together with a statement that the unborn child is in need of protection or care and that the expectant mother is in need of supervision, services, care or rehabilitation.

(f) If the expectant mother is a child and the child expectant mother is being held in custody outside of her home, reliable and credible information showing that continued placement of the child expectant mother in her home would be contrary to the welfare of the child expectant mother and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made reasonable efforts to prevent the removal of the child expectant mother from the home, while assuring that the child expectant mother's health and safety are the paramount concerns, and to make it possible for the child expectant mother to return safely home.

(2) If any of the facts required under sub. (1) (a) to (cm) and (f) or (1m) (a) to (d) and (f) are not known or cannot be ascertained by the petitioner, the petition shall so state.

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

(4) A copy of a petition under sub. (1) shall be given to the child if the child is 12 years of age or over and to the parents, guardian, legal custodian and physical custodian. A copy of a petition under sub. (1m) shall be given to the child expectant mother, if 12 years of age or over, her parents, guardian, legal custodian and physical custodian and the unborn child by the unborn child's guardian ad litem or to the adult expectant mother, the unborn child through the unborn child's guardian ad litem and the physical custodian of the expectant mother, if any. A copy of a petition under sub. (1) or (1m) shall also be given to the tribe or band with which the child is affiliated or with which the unborn child may be eligible for affiliation when born, if the child is an Indian child or the unborn child may be an Indian child when born.

(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; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

A CHIPS petition that 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 that was not already being provided, was insufficient. Interest of Courtney E. 184 Wis. 2d 592, 516 N.W.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 or expectant mother 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, the petition may be amended provided any objecting party is allowed a continuance for a reasonable time.

History: 1977 c. 354; 1979 c. 300; 1995 a. 77; 1997 a. 292.

48.27 Notice; summons. (1) (a) After a petition has been filed relating to facts concerning a situation specified under s. 48.13 or a situation specified in s. 48.133 involving an expectant mother who is a child, 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.

(b) After a petition has been filed relating to facts concerning a situation specified under s. 48.133 involving an expectant mother who is an adult, unless the adult expectant mother voluntarily appears, the court may issue a summons requiring the adult expectant mother to appear personally 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) 1. If the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child, the court shall also notify, under s. 48.273, the child, any parent, guardian and legal custodian of the child, any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child, the unborn child by the unborn child's guardian ad litem, if applicable, and any person specified in par. (b), (d) or (e), 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. When parents who are 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, foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written and may 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.

1m. The court shall give a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under subd. 1. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

2. Failure to give notice under subd. 1. to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under subd. 1., that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child 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.

(c) If the petition that was filed relates to facts concerning a situation under s. 48.133 involving an expectant mother who is an adult, the court shall notify, under s. 48.273, the unborn child by the unborn child's guardian ad litem, the expectant mother, the physical custodian of the expectant mother, if any, and any person

specified in par. (d), if applicable, of all hearings involving the unborn child and expectant mother except hearings on motions for which notice need only be provided to the expectant mother and her counsel and the unborn child through the unborn child's guardian ad litem. The first notice to any interested party shall be written and may 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.

(d) If the petition that was filed relates to facts concerning a situation under s. 48.133 concerning an unborn child who, when born, will be an Indian child, the court shall notify, under s. 48.273, the tribe or band with which the unborn child will be affiliated when born and that tribe or band may, at the court's discretion, intervene in the proceeding before the unborn child is born.

(e) If the petition that was filed relates to facts concerning a situation under s. 48.13, the court shall also notify, under s. 48.273, the court−appointed special advocate for the child of all hearings involving the child. The first notice to a court−appointed special advocate shall be written and shall 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 that notice was given and the person to whom he or she spoke.

(4) (a) A notice under sub. (3) (a) or (b) shall:

1. Contain the name of the child, and the nature, location, date and time of the hearing.

2. Advise the child of his or her right to legal counsel regardless of ability to pay.

(b) A notice under sub. (3) (c) shall:

1. Contain the name of the adult expectant mother, and the nature, location, date and time of the hearing.

2. Advise the adult expectant mother of her right to legal counsel regardless of ability to pay.

(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. In addition, if the child who is the subject of the proceeding is in the care of a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the court shall give the foster parent, treatment foster parent or other physical custodian notice and an opportunity to be heard as provided in sub. (3) (a).

(8) When a petition is filed under s. 48.13 or when a petition involving an expectant mother who is a child is filed under s. 48.133, 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 Wis. 2d xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275; 1997 a. 237, 292; 1999 a. 32, 149.

48.273 Service of summons or notice; expense. (1) Service of summons or notice required by s. 48.27 may be made by mailing a copy thereof to the persons summoned or notified. If the persons fail to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, except where the court determines otherwise because the child is in secure custody, and service shall be made personally by delivering to the persons a copy of the summons or notice; except that if the court is satisfied that it is impracticable to serve the summons or notice personally, it may make an order providing for the service of the summons or notice by certified mail addressed to the last−known addresses of the persons. The court may refuse to grant a continuance when the child is being held in secure custody, but in such a case the court shall order that service of notice of the next hearing be made personally or by certified mail to the last−known address of the person who failed to appear at the hearing. Personal service shall be made at least 72 hours before the time of the hearing. Mail shall be sent at least 7 days before the time of the hearing, except where the petition is filed under s. 48.13 and the person to be notified lives outside the state, in which case the mail shall be sent at least 14 days before the time of the hearing.

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

(3) The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under ss. 48.13 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; 1995 a. 77.

Service under this section is applicable to members of an Indian tribe. In Interest of M.L.S. 157 Wis. 2d 26, 458 N.W.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 in need of protection or services under s. 48.13 or an unborn child of an expectant mother who is a child to be in need of protection or services under s. 48.133, the court shall order the parent of the child to contribute toward the expense of post−adjudication services to the child expectant mother and the child when born the proportion of the total amount which the court finds the parent is able to pay. If the court finds an unborn child of an expectant mother who is an adult to be in need of protection or services under s. 48.133, the court shall order the adult expectant mother to contribute toward the expense of post−adjudication services to the adult expectant mother and the child when born the proportion of the total amount which the court finds the adult expectant mother is able to pay.

(2) (a) If this state or a county provides legal counsel to a child who is subject to a proceeding under s. 48.13 or to a child expectant mother who is subject to a proceeding under s. 48.133, the court shall order the child's parent to reimburse the state or county

in accordance with par. (b) or (c). If this state or a county provides legal counsel to an adult expectant mother who is subject to a proceeding under s. 48.133, the court shall order the adult expectant mother 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 or expectant mother with legal counsel in the proceeding.

(b) If this state provides the child or adult expectant mother with legal counsel and the court orders reimbursement under par. (a), the child's parent or the adult expectant mother may request the state public defender to determine whether the parent or adult expectant mother is indigent as provided under s. 977.07 and to determine the amount of reimbursement. If the parent or adult expectant mother is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent or adult expectant mother 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 or adult expectant mother 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 or adult expectant mother is not indigent or is indigent in part, the court shall establish the amount of reimbursement and shall order the parent or adult expectant mother to pay it.

(cg) The court shall, upon motion by a parent or expectant mother, 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) 1. In a county having a population of less than 500,000, 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 25% of the amount paid for state−provided counsel in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L). The county treasurer shall deposit 100% of the amount paid for county−provided counsel in the county treasury.

2. In a county having a population of 500,000 or more, 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 secretary of administration, who shall deposit the amount paid in the general fund and credit 25% of the amount paid to the appropriation account under s. 20.435 (3) (gx) and the remainder to the appropriation account under s. 20.550 (1) (L).

(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 proceedings 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; 1995 a. 27, 77; 1997 a. 27, 292; 2003 a. 33.

Guardian ad litem fees are not reimbursable under sub.(2) (a). In Interest of G. & L.P. 119 Wis. 2d 349, 349 N.W.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 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1993).

48.29 Substitution of judge. (1) The child, the child's parent, guardian or legal custodian, the expectant mother or the unborn child by the unborn child's guardian ad litem, 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 in the request. When 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 does not apply to proceedings under s. 48.21 or 48.213.

(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. 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.

(3) Subsections (1) and (1m) 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; 1995 a. 77; 1997 a. 35, 292.

Sub. (1) permits more than one party to file a request for a substitution of judge in a TPR proceeding. Julie A.B. v. Sheboygan County, 2002 WI App 220, 257 Wis. 2d. 285, 650 N.W.2d 920.

48.293 Discovery. (1) Copies of all law enforcement officer reports, including the officer's memorandum and witnesses' statements, shall be made available upon request to counsel or guardian ad litem for any party and to the court−appointed special advocate for the child prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 48.09. The identity of a confidential informant may be withheld pursuant to s. 905.10.

(2) All records relating to a child, or to an unborn child and the unborn child's expectant mother, 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 and to inspection by the court−appointed special advocate for the child, upon demand and upon presentation of releases when necessary, at least 48 hours before the proceeding. Persons and unborn children, by

their guardians ad litem, entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel, a guardian ad litem or a court−appointed special advocate not to disclose specified items in the materials to the child or the parent, or to the expectant mother, if the court reasonably believes that the disclosure would be harmful to the interests of the child or the unborn child.

(3) Upon request prior to the fact−finding hearing, counsel for the interests of the public shall disclose to the child, through his or her counsel or guardian ad litem, or to the unborn child, through the unborn child's 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.

(4) In addition to the discovery procedures permitted under subs. (1) to (3), the discovery procedures permitted under ch. 804 shall apply in all proceedings under this chapter.

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

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

This section is the exclusive source of discovery rights of parties in ch. 48 actions. That ch. 804 discovery procedures are not available in ch. 48 actions does not deny due process. State v. Tammy F. 196 Wis. 2d 981, 539 N.W.2d 475 (Ct. App. 1995), 95−1455.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) (a) and 938.396 (2) (a); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03−3018.

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 master's 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 or of an expectant mother whose ability to control her use of alcohol beverages, controlled substances or controlled substance analogs 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 in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. 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 the multidisciplinary screen procedure conducted under s. 48.24 (2) indicates that the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

(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 an expectant mother under s. 48.133 and 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 or expectant mother is in need of treatment for abuse of alcohol beverages, controlled substances or controlled substance analogs or education relating to the use of alcohol beverages, controlled substances and controlled substance analogs and, if so, shall recommend a service plan and an appropriate treatment, from an approved treatment facility, or a court−approved education program.

(2) 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, to counsel or guardian ad litem for the child and to the court−appointed special advocate for the child. If applicable, the court shall also cause copies to be transmitted to counsel or guardian ad litem for the unborn child and the unborn child's expectant mother. 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 or expectant mother. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

(3) If the child, the child's parent or the expectant mother 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 Wis. 2d xiii (1987); 1987 a. 339; 1993 a. 474; 1995 a. 77, 225, 448; 1997 a. 27, 292; 1999 a. 149.

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]

48.297 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 invalidity in whole or in part of the statute on which the petition 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 as having been 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.

(4) Although the taking of a child or an expectant mother of an unborn child into custody is not an arrest, that taking into custody shall be considered an arrest for the purpose of deciding motions which require a decision about the propriety of taking into custody, including 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 or the expectant mother of an unborn child is in custody and the court grants a motion to dismiss based on a defect in the petition or in the institution of the proceedings, the court may order the child or expectant mother to be continued in custody for not more than 48 hours pending the filing of a new petition.

(6) A motion required to be served on a child may be served on his or her attorney of record. A motion required to be served on an unborn child may be served on the unborn child's guardian ad litem.

(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 Wis. 2d xiii (1987); 1995 a. 77; 1997 a. 35, 292.

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 unless a public fact−finding hearing is demanded by a child through his or her counsel, by an expectant mother through her counsel or by an unborn child through the unborn child's guardian ad litem. However, the court shall refuse to grant the public hearing in a proceeding other than a proceeding under s. 48.375 (7), if a parent, guardian, expectant mother or unborn child through the unborn child's guardian ad litem objects.

(ag) In a proceeding other than a proceeding under s. 48.375 (7), if a public hearing is not held, only the parties and their counsel or guardian ad litem, the court−appointed special advocate for the child, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), witnesses and other persons requested by a party and approved by the court may be present, except that the court may exclude a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the child or the child's family or if the court determines that excluding the foster parent, treatment foster parent or other physical custodian would be in the best interests of the child. 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.

(ar) 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. In a proceeding under s. 48.375 (7), the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) may be present if requested by a party and approved by the court.

(b) Except as provided in ss. 48.375 (7) (e) and 48.396, any person who divulges any information which would identify the child, the expectant mother or the family involved in any proceeding under this chapter shall be subject to ch. 785.

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

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

(b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing for a child held in custody under s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders or termination of guardianship orders entered under s. 48.977 (4) (h) 2. or (6) or 48.978 (2) (j) 2. or (3) (g). 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), 48.21 (1) or 48.213 (1) may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual 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 audiovisual 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, all of the following apply:

(a) The court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

(b) The state or the attorney responsible for support enforcement who receives a referral under par. (a) shall perform the duties specified under s. 767.45 (5) (c) and (6r).

(c) The court having jurisdiction over actions affecting the family shall give priority under 767.475 (7m) to an action brought under s. 767.45 whenever the petition filed under s. 767.45 indicates that the matter was referred by the court under par. (a).

(d) 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.

(e) 1. In this paragraph, "genetic test" means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability that a man who is alleged to be a child's father is the child's biological father.

2. The court shall, at the hearing, orally inform any man specified in sub. (6) (intro.) that he may be required to pay for any testing ordered by the court under this paragraph or under s. 885.23.

3. In addition to ordering testing as provided under s. 885.23, if the court determines that it would be in the best interests of the child, the court may order any man specified in sub. (6) (intro.) to submit to one or more genetic tests which shall be performed by an expert qualified as an examiner of genetic markers present on the cells and of the specific body material to be used for the tests, as appointed by the court. A report completed and certified by the court−appointed expert stating genetic test results and the statistical probability that the man alleged to be the child's father is the child's biological father based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at any hearing. The court, upon request by a party, may order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body materials to be used for the tests.

4. If the genetic tests show that an alleged father is not excluded and that the statistical probability that the alleged father is the child's biological father is 99.0% or higher, the court may determine that for purposes of a proceeding under this chapter, other than a proceeding under subch. VIII, the man is the child's biological parent.

5. A determination by the court under subd. 4. is not a judgment of paternity under ch. 767 or an adjudication of paternity under subch. VIII.

(7) 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 but does not allege that he is the father of the child and state that he wishes to establish the paternity of the child or if no man to whom such

notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

(8) 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 Wis. 2d xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; 1997 a. 35, 252, 292, 334; 1999 a. 32, 149.

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]

48.30 Plea hearing. (1) Except as provided in this subsection, the hearing to determine whether any party wishes to contest an allegation that the child or unborn 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 for a child or an expectant mother who is not being held in secure custody or within 10 days after the filing of a petition for a child who is being held in secure custody.

(2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian and the unborn child through the unborn child's guardian ad litem or the adult expectant mother and the unborn child through the unborn child's guardian ad litem, 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. 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 or that an unborn child of a child expectant mother is in need of protection or services under s. 48.133, 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. If a petition alleges that an unborn child of an adult expectant mother is in need of protection or services under s. 48.133, the adult expectant mother of the unborn child shall state whether she desires to contest the petition.

(6) (a) 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 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 or an expectant mother who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing.

(b) 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 of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(7) If 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 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 or an expectant mother who is not held in secure custody.

(8) Before accepting an admission or plea of no contest of the alleged facts in a petition, the court shall:

(a) Address the parties present including the child or expectant mother personally and determine that the plea or 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 the plea or admission 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 plea or admission of the parent and child, of the parent and child expectant mother or of the adult expectant mother.

(9) If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 48.13 or 48.133, the judge shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquiries set forth in sub. (8).

(10) The court may permit any party to participate in hearings under this section by telephone or live audiovisual means.

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 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

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 Wis. 2d 400, 500 N.W.2d 384 (Ct. App. 1993).

A court's failure to inform a juvenile of the right to judicial substitution does not affect its competence and warrants reversal only if the juvenile suffers actual prejudice. State v. Kywanda F. 200 Wis. 2d 26, 546 N.W.2d 440 (1996), 94−1866.

48.305 Hearing upon the involuntary removal of a child or expectant mother. 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 (cm) or (d) 5. or 8. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court shall schedule a plea hearing and fact−finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact−finding hearing may be combined. This time period may be extended only with the consent of the requesting parent, guardian or expectant mother.

History: 1977 c. 354; 1979 c. 300; 1997 a. 292.

48.31 Fact−finding hearing. (1) In this section, "fact−finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 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, the child's parent, guardian, or legal custodian, the unborn child by the unborn child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. 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, except that in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection or services that can be ordered by the court. If the court finds that the child or unborn child is not within the jurisdiction of the court or, in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, that the child or unborn child is not in need of protection or services that can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition 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, 48.133 or 48.42, except that the court shall make findings of fact relating to whether the child or unborn child is in need of protection or services which can be ordered by the court. In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court may not find that the child is suffering 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 or services under s. 48.13 (11m) or an unborn child to be in need of protection or services under s. 48.133, the court may not find that the child or the expectant mother of the unborn child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs 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.

(7) (a) 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 after the fact−finding hearing for a child in secure custody and no more than 30 days after the fact−finding hearing for a child or expectant mother who is not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

(b) 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 of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

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; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105.

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

A fact−finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. In Interest of C.M.L. 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by s. 48.13 (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890.

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 or the unborn child and the unborn child's expectant mother, including an examination under s. 48.295 or a hearing related to the mental condition of the child, the child's parent, guardian or legal custodian or the expectant mother, 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 his or her counsel or of the unborn child by the unborn child's guardian ad litem.

(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 or expectant mother.

(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.

(h) Any period of delay resulting from the need to appoint a qualified interpreter.

(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.

(2m) (a) No continuance or extension of a time limit specified in this chapter may be granted and no period of delay specified in sub. (1) may be excluded in computing a time requirement under this chapter if the continuance, extension, or exclusion would result in any of the following:

1. The court making an initial finding under s. 48.21 (5) (b) 1., 48.355 (2) (b) 6., or 48.357 (2v) (a) 1. that reasonable efforts have been made to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or an initial finding under s. 48.21 (5) (b) 3., 48.355 (2) (b) 6r., or 48.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, more than 60 days after the date on which the child was removed from the home.

2. The court making an initial finding under s. 48.38 (5m) that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the child's permanency plan more than 12 months after the date on which the child was removed from the home or making any subsequent findings under s. 48.38 (5m) as to those reasonable efforts more than 12 months after the date of a previous finding as to those reasonable efforts.

(b) Failure to comply with any time limit specified in par. (a) does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with a time limit specified in par. (a), the court, while assuring the safety of the child, may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

History: 1977 c. 354; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98; 1997 a. 292; 2001 a. 16, 109.

A trial court's sua sponte adjournment of a fact−finding hearing beyond the 30−day limit due to a congested calendar constituted good cause under sub. (2) when the adjournment order was entered within the 30−day period. In Matter of J.R. 152 Wis. 2d 598, 449 N.W.2d 52 (Ct. App. 1989).

A court loses competence to exercise jurisdiction to extend an order when the hearing is not held within the 30−day period under s. 48.365 (6); the 30−day period may not be expanded by a continuance under s. 48.315 and the court's loss of competence cannot be waived. In Interest of B.J.N. 162 Wis. 2d 635, 469 N.W.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 Wis. 2d 335, 507 N.W.2d 141 (Ct. App. 1993).

Under sub. (2), "on the record" does not require reporting by a court reporter. A clerk's minutes satisfy the requirement. Waukesha County v. Darlene R. 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996), 95−1697.

The benefits of a pretrial are universally recognized by bench and bar such that a court need not specify the factors supporting "good cause" for a continuance of the time limits under sub. (2). Waukesha County v. Darlene R. 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996), 95−1697.

Under sub. (1) (a), the time limits are tolled for an examination of a parent under s. 48.295. Waukesha County v. Darlene R. 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996), 95−1697.

The general time requirements of sub. (2) control all extensions of time under ch. 48. There are no provisions for waiver of time limits, and the only provisions for delays, continuances, and extensions are under this section. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927.

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) (a) At any time after the filing of a petition for a proceeding relating to s. 48.13 or 48.133 and before the entry of judgment, the judge or a circuit court commissioner may suspend the proceedings and place the child or expectant mother under supervision in the home or present placement of the child or expectant mother. The court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian, to the child expectant mother and her parent, guardian or legal custodian or to the adult expectant mother, including the condition specified in sub. (1b). 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; by the child expectant mother, her parent, guardian or legal custodian, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25; or by the adult expectant mother, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25. The consent decree shall be reduced to writing and given to the parties.

(b) 1. If at the time the consent decree is entered into the child is placed outside the home under a voluntary agreement under s. 48.63 or is otherwise living outside the home without a court order and if the consent decree maintains the child in that placement or other living arrangement, the consent decree shall include a finding that placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

2. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the consent decree shall include a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge or circuit court commissioner shall make the findings specified in subds. 1. and 2. on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the consent decree. A consent decree that merely references subd. 1. or 2. without documenting or referencing that specific information in the consent decree or an amended consent decree that retroactively corrects an earlier consent decree that does not comply with this subdivision is not sufficient to comply with this subdivision.

(c) 1. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent,

treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(1b) The judge or a circuit court commissioner may, as a condition under sub. (1), request a court−appointed special advocate program to designate a court−appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court−appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

(2) (a) A consent decree shall remain in effect up to 6 months unless the child, parent, guardian, legal custodian or expectant mother is discharged sooner by the judge or circuit court commissioner.

(c) Upon the motion of the court or the application of the child, parent, guardian, legal custodian, expectant mother, unborn child by the unborn child's guardian ad litem, intake worker or any agency supervising the child or expectant mother under the consent decree, the court may, after giving notice to the parties to the consent decree, their counsel or guardian ad litem and the court−appointed special advocate for the child, 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 child, parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem objects to the extension, the judge shall schedule a hearing and make a determination on the issue of extension. An extension under this paragraph of a consent decree relating to an unborn child who is alleged to be in need of protection or services may be granted after the child is born.

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

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

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

(b) A consent decree is granted but the petition under s. 48.13 or 48.133 is subsequently reinstated.

(6) The judge or circuit court commissioner shall inform the child and the child's parent, guardian or legal custodian, or the adult expectant mother, in writing, of the right of the child or expectant mother to object to the continuation of the consent decree under sub. (3) and the fact that the hearing under which the child or expectant mother 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; 1995 a. 24, 77, 448; 1997 a. 292; 1999 a. 149; 2001 a. 61, 109.

A finding that a consent decree has been violated must be made before the consent decree expires. Filing a motion to vacate the consent decree prior to its expiration does not extend the term of the decree and does not prevent the automatic dismissal of the original petition upon the expiration of the decree. Interest of Leif E.N. & Nora M.S. 189 Wis. 2d 480, 526 N.W.2d 275 (Ct. App. 1994).

SUBCHAPTER VI

DISPOSITION

48.33 Court reports. (1) REPORT REQUIRED. Before the disposition of a child or unborn child adjudged to be in need of protection or services the court shall designate an agency, as defined in s. 48.38 (1) (a), to submit a report which shall contain all of the following:

(a) The social history of the child or of the expectant mother of the unborn child.

(b) A recommended plan of rehabilitation or treatment and care for the child or expectant mother 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 or unborn child abuse, which also includes an assessment of risks to the physical safety and physical health of the child or unborn child 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 or for the expectant mother of the unborn child, the persons or agencies that would be primarily responsible for providing those services, the identity of the person or agency that would provide case management or coordination of services, if any, and, in the case of a child adjudged to be in need of protection or services, whether or not the child should receive an integrated service plan.

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

(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 or the expectant mother to participate in mental health treatment, anger management, individual or family counseling or parent or prenatal development training and education, a statement as to the availability of those services and as to the availability of funding for those services.

(2) HOME PLACEMENT REPORTS. A report recommending that the child remain in his or her home or that the expectant mother remain in 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.

(4) OTHER OUT−OF−HOME PLACEMENTS. A report recommending placement of an adult expectant mother outside of her home shall be in writing. A report recommending placement of a child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent 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 child support agency under s. 59.53 (5) for the establishment of child support.

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (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; 1995 a. 27, 77, 201; 1997 a. 27, 292; 2001 a. 59, 109.

Cross Reference: See also s. HFS 58.04, Wis. adm. code.

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 in need of protection or services under s. 48.13 or an unborn child is adjudged to be in need of protection or services under s. 48.133.

(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.

(3g) At hearings under this section, if the agency, as defined in s. 48.38 (1) (a), is recommending placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(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 hearings 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 audiovisual 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 Wis. 2d xiii (1987); 1993 a. 98, 481; 1995 a. 77; 1997 a. 252, 292; 2001 a. 109.

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]

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

48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services. If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother 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 this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have a disability specified in s. 115.76 (5) in facilities which exclusively treat those categories of children and the court may not place any child expectant mother of an unborn child in need of protection or services outside of the child expectant mother's home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The dispositions under this section are as follows:

(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, designed for the physical, mental and moral well−being and behavior of the child and, if applicable, for the physical well−being of the child's unborn child.

(2m) Place the child in the child's home under the supervision of an agency or the department, if the department approves, and order the agency or department 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 parent skills training or prenatal development training or education.

(2r) Place the child as provided in sub. (2) or (2m) and, in addition, request a court−appointed special advocate program to designate a court−appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court−appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

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

(a) The home of a parent or other relative of the child, except that the judge may not designate the home of a parent or other relative of the child as the child's placement if the parent or other rela-

tive has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the judge may not designate the home of a person who is not required to be licensed as the child's placement if the person has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

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

(cm) A group home described in s. 48.625 (1m) if the child is at least 12 years of age, is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

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

(a) A relative of the child.

(b) The county department in a county having a population of less than 500,000.

(bm) The department in a county having a population of 500,000 or more.

(c) A licensed child welfare agency.

(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 paragraph 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 (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.

(10) SUPERVISED INDEPENDENT LIVING. (a) The judge may order that a child, on attaining 17 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.

(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 technical college district located in the school district in which the child resides.

(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, department, in a county having a population of 500,000 or more, 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, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child to disclose to the school board, technical college district board or private, nonprofit, nonsectarian 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).

(d) This subsection does not apply to a child with a disability, as defined under s. 115.76 (5).

(13) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (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, controlled substances or controlled substance analogs 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 approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, 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 (1) recommends that the child is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, 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 education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, 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 an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(14) (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the child expectant mother of an unborn child in need of protection or services is in need of inpatient treatment for her habitual lack of self−control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the child expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the child expectant mother's needs, the judge may order the child expectant mother to enter an inpatient alcohol or other drug abuse treatment program at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the child expectant mother or the child expectant mother's parent if the child expectant mother has not attained the age of 12, report to the agency primarily responsible for providing services to the child expectant mother as to whether the child expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(15) If it appears that an unborn child in need of protection or services may be born during the period of the dispositional order, the judge may order that the child, when born, be provided with any services or care that may be ordered for a child in need of protection or services under this section.

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149; 2001 a. 59, 69.

48.347 Disposition of unborn child of adult expectant mother adjudged in need of protection or services. If the judge finds that the unborn child of an adult expectant mother 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 this section under a care and treatment plan, except that the order may not place any adult expectant mother of an unborn child not specifically found under ch. 51, 55 or 880 to be developmentally disabled or mentally ill in a facility which exclusively treats those categories of individuals and the court may not place any adult expectant mother of an unborn child in need of protection or services outside of the adult expectant mother's home unless the court finds that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. If the judge finds that the unborn child of a child expectant mother 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. 48.345 under a care and treatment plan. The dispositions under this section are as follows:

(1) COUNSELING. Counsel the adult expectant mother.

(2) SUPERVISION. Place the adult expectant mother under supervision of the county department, the department, if the department approves, or a suitable adult, including an adult relative or friend of the adult expectant mother, under conditions prescribed by the judge including reasonable rules for the adult expectant mother's conduct, designed for the physical well−being of the unborn child. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or prenatal development training or education and to make a reasonable contribution, based on ability to pay, for the cost of those services.

(3) PLACEMENT. Designate one of the following as the placement for the adult expectant mother:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A community−based residential facility, as defined in s. 50.01 (1g).

(4) SPECIAL TREATMENT OR CARE. (a) If the adult expectant mother 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 adult expectant mother to obtain the special treatment or care. If the adult expectant mother fails or is financially unable to obtain the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care. 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 paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for any 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 any 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.

(5) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the adult expectant mother 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 approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the adult expectant mother 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 education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother about the adult expectant mother's attendance at the program.

(c) Payment for any treatment or education ordered under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(6) INPATIENT ALCOHOL OR DRUG TREATMENT. (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the adult expectant mother is in need of inpatient treatment for her habitual lack of self−control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the adult expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the adult expectant mother's needs, the judge may order the adult expectant mother to enter an inpatient alcohol or other drug abuse treatment pro-

gram at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(7) SERVICES FOR CHILD WHEN BORN. If it appears that the unborn child may be born during the period of the dispositional order, the judge may order that the child, when born, be provided any services or care that may be ordered for a child in need of protection or services under s. 48.345.

History: 1997 a. 292.

48.35 Effect of judgment and disposition. (1) (a) The judge shall enter a judgment setting forth his or her findings and disposition in the proceeding.

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

1. In sentencing proceedings after the child or expectant mother has been convicted of a felony or misdemeanor and then only for the purpose of a presentence investigation.

2. In a proceeding in any court assigned to exercise jurisdiction under this chapter and ch. 938.

3. In a court of civil or criminal jurisdiction while it is exercising jurisdiction over an action affecting the family and is considering the custody of a child.

(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 unborn 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; 1995 a. 27, 77; 1997 a. 205, 292.

48.355 Dispositional orders. (1) INTENT. In any order under s. 48.345 or 48.347 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 well−being of the child or unborn child which are the least restrictive of the rights of the parent and child, of the rights of the parent and child expectant mother or of the rights of the adult expectant mother, and which assure the care, treatment or rehabilitation of the child and the family, of the child expectant mother, the unborn child and the family or of the adult expectant mother and the unborn child, consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect or unborn child abuse, when it is consistent with the best interest of the child or unborn child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent or of placing an expectant mother outside of her home only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible.

(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 condition and need for special treatment or care of the child or expectant mother if an examination or assessment was conducted under s. 48.295. A finding may not include a finding that a child or an expectant mother 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, to the child expectant mother and family or to the adult expectant mother, the identity of the agencies which are to be primarily responsible for the provision of the services ordered by the judge, the identity of the person or agency who will provide case management or coordination of services, if any, and, if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian.

1m. A notice that the child's parent, guardian or legal custodian, the child, if 14 years of age or over, the expectant mother, if 14 years of age or over, or the unborn child by the unborn child's guardian ad litem may request an agency that is providing care or services for the child or expectant mother or that has legal custody of the child to disclose to, or make available for inspection by, the parent, guardian, legal custodian, child, expectant mother or unborn child by the unborn child's guardian ad litem the contents of any record kept or information received by the agency about the child or expectant mother as provided in s. 48.78 (2) (ag) and (aj).

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.

2m. If the adult expectant mother is placed outside her home, the name of the place or facility, including transitional placements, where the expectant mother shall be treated.

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 child support agency under s. 59.53 (5) for establishment of child support.

4m. If the child is placed outside the home and if the child's parent has not already provided a statement of income, assets, debts and living expenses to the county department or, in a county having a population of 500,000 or more, the department under s. 48.30 (6) (b) or (c) or 48.31 (7) (b) or (c), an order for the parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

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

6. If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to

prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies. The court shall make the findings specified in this subdivision on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

6m. If the child is placed outside the home in a placement recommended by the agency designated under s. 48.33 (1), a statement that the court approves the placement recommended by the agency or, if the child is placed outside the home in a placement other than a placement recommended by that agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties relating to the child's placement.

6r. If the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

7. A statement of the conditions with which the child or expectant mother 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, or the governing body of the private school, in which the child is enrolled to notify the county department that is responsible for supervising the child or, in a county having a population of 500,000 or more, the department within 5 days after any violation of the condition by the child.

(d) The court shall provide a copy of a dispositional order relating to a child in need of protection or services to the child's parent, guardian or trustee, to the child through the child's counsel or guardian ad litem and to the child's court−appointed special advocate. The court shall provide a copy of a dispositional order relating to an unborn child in need of protection or services to the expectant mother, to the unborn child through the unborn child's guardian ad litem and, if the expectant mother is a child, to her parent, guardian or trustee.

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to a child under a court order may, at the same time as the county department, department, or agency is making the reasonable efforts required under sub. (2) (b) 6. to prevent the removal of the child from the home or to make it possible for the child to return safely to his or her home, work with the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether the county department, the department, in a county having a population of 500,000 or more, 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, while assuring that the child's health and safety are the paramount concerns, 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 health, safety and 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 county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made reasonable efforts to achieve the goal of the permanency plan, the court's consideration of reasonable efforts shall include 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.

(2d) REASONABLE EFFORTS NOT REQUIRED. (a) In this subsection:

1. "Aggravated circumstances" include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse and sexual abuse.

2. "Sexual abuse" means a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law of any other state or federal law if that violation would be a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in this state.

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a child to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or a finding as to whether the county department, department, or agency has made reasonable efforts with respect to a parent of a child to achieve the permanency plan goal of returning the child safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the child to aggravated circumstances, as evidenced by a final judgment of conviction.

2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.

3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.

4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.

5. That the parent has been found under s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger, as evidenced by a final order of a court of competent jurisdiction making that finding.

(bm) The court shall make a finding specified in par. (b) 1. to 5. on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which that finding is based in the dispositional order. A dispositional order that merely references par. (b) 1. to 5. without documenting or referencing that specific information in the dispositional order or an amended dispositional order that retroactively corrects an earlier dispositional order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) 1. If the court finds that any of the circumstances specified in par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(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, to the child's court−appointed special advocate 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 or for the treatment of the expectant mother pending the availability of the dispositional placement.

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

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a parent of a child if the parent has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

1m. Except as provided in subd. 2., if a parent who is granted visitation rights with a child under par. (a) is convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the parent from having visitation with the child on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(4) TERMINATION OF ORDERS. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in his or her home shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall terminate when the child reaches 18 years of age, at the end of one year after its entry, or, if the child is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, when the child reaches 19 years of age, whichever is later, unless the judge specifies a shorter period of time or the judge terminates the order sooner. An order under this section or s. 48.357 or 48.365 relating to an unborn child in need of protection or services that is made before the unborn child is born shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner.

(5) EFFECT OF COURT ORDER. Any party, person or agency who provides services for the child or the expectant mother under this section shall be bound by the court order.

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS, EXPECTANT MOTHERS AND OTHER ADULTS. In addition to any dispositional order entered under s. 48.345 or 48.347, the court may enter an order applicable to the parent, guardian or legal custodian of a child, to a family member of an adult expectant mother 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; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292; 1999 a. 9, 103, 149, 186; 2001 a. 2, 16, 109.

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

A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education−related costs against the parents. Calumet County Department of Human Services v. Randall H. 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503.

48.356 Duty of court to warn. (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court or the expectant mother who appears 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 or expectant mother to be returned to the home or for the parent to be granted visitation.

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

History: 1979 c. 330; 1983 a. 399; 1989 a. 86; 1991 a. 39; 1995 a. 275; 1997 a. 292; 2003 a. 321.

Substantial compliance is not adequate to meet the sub. (2) notice provision; oral, rather than written, notice is insufficient. In re D.F. 147 Wis. 2d 486, 433 N.W.2d 609 (Ct. App. 1988).

Dismissal of termination proceedings because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required on one order. In Interest of K.K. 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

To comply with sub. (2), the written order must 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 Wis. 2d 218, 493 N.W.2d 56 (1992).

When termination is under s. 48.415 (8) for murdering the other parent, no notice under sub. (1) of the conditions necessary for the return of the child is necessary as the grounds for termination, the murder, cannot be remedied. Winnebago County DSS v. Darrell A. 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. State v. Patricia A.P. 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995), 95−1164.

The written warning under sub. (2) applies only to orders removing children from placement with their parents or denying parental visitation. Temporary physical custody orders or extensions of those orders may not lead to a loss of parental rights and do not require the written warning. Marinette County v. Tammy C. 219 Wis. 2d 206, 579 N.W.2d 635 (1998).

The last order placing the child outside the home issued before the filing of the petition to terminate parental rights, rather than each order, must contain the written notice prescribed by s. 48.356 (2). Waukesha County v. Steven H. 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607. But see also *Waushara County v. Lisa K.* 2000 WI App 145, 237 Wis. 2d 830, 615 N.W.2d 204 in which it was held that there was adequate notice when an extension order, which was the final order issued before a TPR petition was filed, did not contain the written notice, but the earlier orders that were extended had.

48.357 Change in placement. (1) (a) The person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel may request a change in the placement of the child or expectant mother, whether or not the change requested is authorized in the dispositional order,, as provided in par. (am) or (c), whichever is applicable.

(am) 1. If the proposed change in placement involves any change in placement other than a change in placement specified in par. (c), the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall cause written notice of the proposed change in placement to be sent to the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court−appointed special advocate, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem. If the expectant mother is an adult, written notice shall be sent to the adult expectant mother and the unborn child by the unborn child's guardian ad litem. 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.

2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2) (b) 2., other than a court−appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, or legal custodian and the child, if 12 years of age or over, or the child expectant mother, if 12 years of age or over, her parent, guardian, or legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

3. If the court changes the child's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements specified in sub. (2v) (a) 2.

(c) 1. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request 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. The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

2. The court shall hold a hearing prior to ordering any change in placement requested under subd. 1. Not less than 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the child, the parent, guardian, and legal custodian of the child, the child's court−appointed special advocate, and all parties that are bound by the dispositional order. If all parties consent, the court may proceed immediately with the hearing.

3. If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v) (a) 1., one of the statements specified in sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in sub. (2v) (a) 3.

(2) If emergency conditions necessitate an immediate change in the placement of a child or expectant mother placed outside the home, the person or agency primarily responsible for implementing the dispositional order may remove the child or expectant mother to a new placement, whether or not authorized by the existing dispositional order, without the prior notice provided in sub. (1) (am) 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) (am) 2. In emergency situations, a 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. 48.345 (3).

(2m) (a) The child, the parent, guardian, or legal custodian of the child, the expectant mother, the unborn child by the unborn child's guardian ad litem, 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 paragraph. The request shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the request shall also contain specific information showing that continued placement of the child in the home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns. The request shall be submitted to the court. In addition, the court may propose a change in placement on its own motion.

(b) The court shall hold a hearing on the matter prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement, unless the requested or proposed change in placement involves any change in placement other than a change in placement of a child placed in the home to a placement outside the home and written waivers of objection to the proposed change in placement are signed by all persons entitled to receive notice under sub. (1) (am) 1., other than a court−appointed special advocate, and the court approves. If a hearing is scheduled, the court shall notify the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court−appointed special advocate, all parties who are bound by the dispositional order, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem, 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 of the parties consent, the court may proceed immediately with the hearing.

(c) If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v) (a) 1., one of the statements specified in sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in sub. (2v) (a) 3.

(2r) If a hearing is held under sub. (1) (am) 2. or (2m) (b) and the change in placement would remove a child from a foster home, treatment foster home, or other placement with a physical custodian described in s. 48.62 (2), the court shall give the foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the child and the requested change in placement. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (am) 1. or (2m) (b) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2v) (a) A change in placement order under sub. (1) or (2m) shall contain all of the following:

1. If the change in placement order changes the child's placement from a placement in the child's home to a placement outside the child's home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

2. If the change in placement order would change the placement of the child to a placement outside the home recommended by the person or agency primarily responsible for implementing the dispositional order, whether from a placement in the home or from another placement outside the home, a statement that the court approves the placement recommended by that person or agency or, if the change in placement order would change the placement of the child to a placement outside the home that is not a placement recommended by that person or agency, whether from a placement in the home or from another placement outside the home, a statement that the court has given bona fide consideration to the recommendations made by that person or agency and all parties relating to the child's placement.

3. If the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

(b) The court shall make the findings specified in par. (a) 1. and 3. on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the change in placement order. A change in placement order that merely references par. (a) 1. or 3. without documenting or referencing that specific information in the change in placement order or an amended change in placement order that retroactively corrects an earlier change in placement order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) 1. If the court finds under par. (a) 3. that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(4d) (a) Except as provided in par. (b), the court may not change a child's placement to a placement in the home of a person who has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, if the conviction has not been reversed, set aside or vacated.

(am) Except as provided in par. (b), if a parent in whose home a child is placed is convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated, the court shall change the child's placement to a placement out of the home of the parent on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the placement would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(5m) (a) 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 of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 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).

(b) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(5r) The court may not change the placement of an expectant mother of an unborn child in need of protection or services from a placement in the expectant mother's home to a placement outside of the expectant mother's home unless the court finds that the expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(6) No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the child's home to a placement outside the home the court may extend the expiration date of the original order to the date on which the child reaches 18 years of age, to the date that is one year after the date of the change in placement order, or, if the child is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, to the date on which the child reaches 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall shorten the expiration date of the original order to the date that is one year after the date of the change in placement order or to an earlier date as specified by the court.

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292; 1999 a. 9, 103, 149; 2001 a. 16, 103, 109.

A foster parent is entitled to a hearing under s. 48.64 (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. Bingenheimer v. DHSS, 129 Wis. 2d 100, 383 N.W.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. 48.345 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. 46.22, 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 under s. 49.22 (2m) to the department of workforce development or the county child support agency under s. 59.53 (5). 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 an expectant mother or 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 of those services or that treatment, if ordered by the court, shall be a charge upon the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child or from an adult expectant mother as the court may order based on the ability of the parent, guardian or adult expectant mother to pay. This subsection shall be subject to s. 46.03 (18).

(3) In determining county or departmental 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; 1995 a. 27 ss. 2468, 9126 (19); 1995 a. 77, 404; 1997 a. 3, 27, 292.

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. 48.345 (6) (a) or 48.347 (4) (a).

(c) Any alcohol or other drug abuse treatment or education ordered by a court under s. 48.345 (6) (a), (13) or (14) or 48.347 (4) (a), (5) or (6) (a).

(2) (a) 1. If a child's parent neglects, refuses or is unable 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.

1m. If an adult expectant mother neglects, refuses or is unable to obtain court−ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd−party payments, the judge may order the adult expectant mother to pay for the court−ordered alcohol and drug abuse services. If the adult expectant mother consents to obtain court−ordered alcohol and other drug abuse services for herself through 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 adult expectant mother'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 an alcohol or other drug abuse 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 an alcohol and other drug abuse program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with s. 48.345 (6) (a), 48.347 (4) (a) or 48.36.

(b) 1. In counties that have an alcohol and other drug abuse 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.

1m. In counties that have an alcohol and other drug abuse 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 adult expectant mother's county of legal residence to pay for the court−ordered alcohol and other drug abuse services provided for the adult expectant mother.

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 or adult expectant mother which is based upon the ability of the parent or adult expectant mother to pay. This subsection is subject to s. 46.03 (18).

History: 1987 a. 339; 1989 a. 56 s. 259; 1993 a. 446; 1995 a. 77, 275; 1997 a. 292.

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. 48.345 (6) (a), whether or not custody has been taken from the parent, and to the payment of court−ordered special treatment or care under s. 48.347 (4) (a).

(3) If a child's parent neglects, refuses or is unable 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.

(3m) If an adult expectant mother neglects, refuses or is unable to obtain court−ordered special treatment or care for herself through her health insurance or other 3rd−party payments, the judge may order the adult expectant mother to pay for the court−ordered special treatment or care. If the adult expectant mother consents to obtain court−ordered special treatment or care for herself through 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 adult expectant mother's health insurance policy or other 3rd−party payment plan.

(4) (a) If the judge finds that payment is not attainable under sub. (3) or (3m), the judge may order the county department under s. 51.42 or 51.437 of the county of legal residence of the child or expectant mother 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 or adult expectant mother, based on the ability of the parent or adult expectant mother to pay, a reasonable contribution toward the costs of the court−ordered special treatment or care. This paragraph is subject to s. 46.03 (18).

History: 1993 a. 446; 1995 a. 77, 275; 1997 a. 292.

48.363 Revision of dispositional orders. (1) (a) A child, the child's parent, guardian or legal custodian, an expectant mother, an unborn child by the unborn child's guardian ad litem, 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 prior to any revision of the dispositional order if the request or court proposal indicates that new information is available which affects the advisability of the court's dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

(b) If a hearing is held, the court shall notify the child, the child's parent, guardian and legal custodian, all parties bound by the dispositional order, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the child's court−appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem; or shall notify the adult expectant mother, the unborn child through the unborn child's guardian ad litem, 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 all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

(c) 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 of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(d) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(1m) If a hearing is held under sub. (1) (a), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2) If the court revises a dispositional order 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; 1995 a. 275, 404; 1997 a. 3, 80, 237, 292; 1999 a. 103, 149; 2001 a. 38, 109.

Sub. (1) does not set the procedure to adjudicate the issue of residence for an incompetent minor whose parent's residence has changed. Waukesha County v. Dodge County, 229 Wis. 2d 766, 601 N.W.2d 296 (Ct. App. 1999).

48.365 Extension of orders. (1) In this section, a child is considered to have been placed outside of his or her home on the date on which the child was first removed from his or her home.

(1m) The parent, child, guardian, legal custodian, expectant mother, unborn child by the unborn child's guardian ad litem, 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 including an order under s. 48.355 that was entered before the child was born. 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, the child's parent, guardian and legal custodian, all the parties present at the original hearing, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the child's court−appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child through the unborn child's guardian ad litem, 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 or expectant mother 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 rehabilitation or care and treatment of the child or for the rehabilitation and treatment of the expectant mother and the care of the unborn child.

(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, and specific information showing the efforts that have been made to achieve the goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the child's placement, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

3. If the child has been placed outside of his or her home for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out−of−home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, 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) 1. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the person or agency primarily responsible for providing services to the child shall present as evidence specific information showing that the agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies. The judge shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies. An order shall be issued under s. 48.355.

2. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the child is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge shall make the findings specified in subd. 1. relating to reasonable efforts to achieve the goal of the child's permanency plan and the findings specified in subd. 2. on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the order issued under s. 48.355. An order that merely references subd. 1. or 2. without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this subdivision is not sufficient to comply with this subdivision.

(ad) 1. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

(ag) The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (ad) 2. or sub. (2) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under par. (ad) 2. or sub. (2) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(b) If a child has been placed outside the home under s. 48.345, or if an adult expectant mother has been placed outside the home under s. 48.347, 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, an order under this section that continues the placement of a child in his or her home or that relates to an unborn child of an adult expectant mother shall be for a specified length of time not to exceed one year after its date of entry. Except as provided in s. 48.368, an order under this section that continues the placement of a child in an out−of−home placement shall be for a specified length of time not to exceed the date on which the child reaches 18 years of age, one year after the date of entry of the order, or, if the child is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, the date on which the child reaches 19 years of age, whichever is later.

(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. Changes in placement may take place only under s. 48.357.

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; 1995 a. 27, 77, 275; 1997 a. 27, 80, 237, 292; 1999 a. 32, 149; 2001 a. 109.

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

An extension under sub. (6) does not deprive a juvenile of liberty without due process. In Interest of S.D.R. 109 Wis. 2d 567, 326 N.W.2d 762 (1982).

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

The court may extend a dispositional order for 30 days under sub. (6) to consider a petition to extend the original order even when the juvenile turns 18 during the extension period. In Interest of W.P. 153 Wis. 2d 50, 449 N.W.2d 615 (1990).

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

48.366 Extended court jurisdiction. (1) APPLICABILITY. (a) Subject to par. (c), if the person committed any crime specified under s. 940.01, 940.02, 940.05, 940.21, 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), 1993 stats., 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) Subject to par. (c), 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.

(c) A court may not enter an order extending its jurisdiction as provided in par. (a) or (b) with respect to any violation committed after June 30, 1996.

(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 of corrections or county department ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(b) The department of corrections 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 of corrections 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 of corrections 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 of corrections 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 of corrections may contract with the county department under s. 301.08 (2) 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 of corrections or county department ordered under s. 48.34 (4n), 1993 stats., 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 of corrections 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 of corrections 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 of corrections 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 of corrections or county department, whichever has been ordered under s. 48.34 (4n), 1993 stats., 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 of corrections 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 of corrections may transfer a person subject to an order between secured correctional facilities. After the person attains the age of 17 years, the department of corrections may place the person in a state prison named in s. 302.01, except that the department of corrections may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). If the person is 15 years of age or over, the department of corrections may transfer the person to the Racine youthful offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d). If the department of corrections places a person subject to an order under this section in a state prison, that department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). 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), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n).

History: 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16.

48.368 Continuation of dispositional orders. (1) 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.

(2) If a child's placement with a guardian appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent foster placement for the child while a dispositional order under s. 48.345, a revision order under s. 48.363 or an extension order under s. 48.365 is in effect with respect to the child, such dispositional order, revision order or extension order shall remain in effect until the earliest of the following:

(a) Thirty days after the guardianship terminates under s. 48.977 (7).

(b) A court enters a change in placement order under s. 48.357.

(c) A court order terminates such dispositional order, revision order or extension order.

(d) The child attains the age of 18 years.

History: 1989 a. 86; 1993 a. 446; Stats. 1993 s. 48.368; 1995 a. 275; 1997 a. 80.

48.37 Costs and fees. (1) A court assigned to exercise jurisdiction under this chapter and ch. 938 may not impose costs, fees, or surcharges under ch. 814 against a child under 14 years of age but may impose costs, fees, and surcharges under ch. 814 against a child 14 years of age or older.

(2) Notwithstanding sub. (1), no costs, fees, or surcharges may be imposed under ch. 814 against any child in a circuit court exercising jurisdiction under s. 48.16.

History: 1977 c. 354, 449; 1979 c. 300, 359; 1987 a. 27; 1991 a. 263; 1993 a. 387; 1995 a. 77; 2003 a. 139.

48.371 Access to certain information by substitute care provider. (1) If a child is placed in a foster home, treatment foster home, group home, or residential care center for children and youth, including a placement under s. 48.205 or 48.21, the agency, as defined in s. 48.38 (1) (a), that placed the child or arranged for the placement of the child shall provide the following information to the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) 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, as provided under s. 252.15 (5) (a) 19., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth of the confidentiality requirements under s. 252.15 (6).

(b) Results of any tests of the child to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(c) Any other medical information concerning the child that is necessary for the care of the child. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(3) At the time of placement of a child in a foster home, treatment foster home, group home, or residential care center for children and youth or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 48.38 (1) (a), responsible for preparing the child's permanency plan shall provide to the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth information contained in the court report submitted under s. 48.33 (1), 48.365 (2g), 48.425 (1), 48.831 (2) or 48.837 (4) (c) or permanency plan submitted under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c) or 48.831 (4) (e) relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to any of the following:

(a) Any mental, emotional, cognitive, developmental, or behavioral disability of the child. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this subsection shall keep the information confidential.

(b) Any involvement of the child in any criminal gang, as defined in s. 939.22 (9), or in any other group in which any child was traumatized as a result of his or her association with that group. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(c) Any involvement of the child in any activities that are harmful to the child's physical, mental, or moral well−being. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(d) Any involvement of the child, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02, or 948.025, prostitution in violation of s. 944.30, sexual exploitation of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity in violation of s. 948.055, if the information is necessary for the care of the child or for the protection of any person living in the foster home, treatment foster home, group home, or residential care center for children and youth. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(e) The religious affiliation or belief of the child.

History: 1993 a. 395; 1995 a. 275; 1997 a. 272; 2001 a. 59, 69, 105.

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 and ch. 938 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 938 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 ch. 938 and 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; 1995 a. 77.

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, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed 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. 938.12 or 938.13 (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 inflicted abuse on 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 (1m) (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), (f), and (h), 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; 1995 a. 77, 275, 309; 2001 a. 16, 103.

The essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. Planned Parenthood v. Casey, 505 U.S. 833, 120 L. Ed. 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 appropriate, 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, residential care center for children and youth, 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 any of the following conditions exists, and, for each child living in the home of a relative other than a parent, that agency shall prepare a written permanency plan, if any of the conditions specified in pars. (a) to (e) 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 the supervision of an agency under s. 48.64 (2), under a consent decree under s. 48.32 (1) (b), or under 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) or (5) (b).

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

(f) The child's care would be paid for under s. 49.19 but for s. 49.19 (20).

(g) The child's parent is placed in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility and the child is residing with that parent.

(3) TIME. Subject to s. 48.355 (2d) (c) 1., the agency shall file the permanency plan with the court within 60 days after the date on which the child was first removed from his or her home, except that 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 all of the following:

(ag) The name, address, and telephone number of the child's parent, guardian, and legal custodian.

(am) The date on which the child was removed from his or her home and the date on which the child was placed in out−of−home care.

(ar) A description of the services offered and any services provided in an effort to prevent the removal of the child from his or her home, while assuring that the health and safety of the child are the paramount concerns, and to achieve the goal of the permanency plan, except that the permanency plan is not required to include a description of the services offered or provided with respect to a parent of the child to prevent the removal of the child from the home or to achieve the permanency plan goal of returning the child safely to his or her home if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent.

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

(bm) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate.

(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 or documentation that placement more than 60 miles from the child's home is in the child's best interests. The placement of a child in a licensed foster home or a licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1).

2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.

3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833 or 48.837.

(dg) Information about the child's education, including all of the following:

1. The name and address of the school in which the child is or was most recently enrolled.

2. Any special education programs in which the child is or was previously enrolled.

3. The grade level in which the child is or was most recently enrolled and all information that is available concerning the child's grade level performance.

4. A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared under s. 48.33 (1) (e).

(dm) If as a result of the placement the child has been or will be transferred from the school in which the child is or most recently was enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child's transfer to another school would be in the child's best interests.

(dr) Medical information relating to the child, including all of the following:

1. The names and addresses of the child's physician, dentist, and any other health care provider that is or was previously providing health care services to the child.

2. The child's immunization record, including the name and date of each immunization administered to the child.

3. Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.

4. The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description 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 safe or appropriate.

(f) A description of 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, the operator of the facility where the child is living, or the relative with whom 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 safety and 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 safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(fg) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 48.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a com-

pelling reason why it would not be in the best interest of the child to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a child's permanency plan:

1. Return of the child to the child's home.

2. Placement of the child for adoption.

3. Placement of the child with a guardian.

4. Permanent placement of the child with a fit and willing relative.

5. Some other alternative permanent placement, including sustaining care, independent living, or long−term foster care.

(fm) If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal.

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

(h) If the child is 15 years of age or over, a description of the programs and services that are or will be provided to assist the child in preparing for the transition from out−of−home care to independent living. The description shall include all of the following:

1. The anticipated age at which the child will be discharged from out−of−home care.

2. The anticipated amount of time available in which to prepare the child for the transition from out−of−home care to independent living.

3. The anticipated location and living situation of the child on discharge from out−of−home care.

4. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for the transition from out−of−home care to independent living.

5. The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out−of−home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

(5) PLAN REVIEW. (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the child was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the child was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review the court shall hold a hearing under sub. (5m) to review the permanency plan, which hearing may be instead of or in addition to the review under this subsection.

(ag) 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 in a county having a population of less than 500,000 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. If the court in a county having a population of 500,000 or more appoints an independent agency under this paragraph, the department 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, the operator of the facility in which the child is living, or the relative with whom the child is living of the date, time, and place of the review, of the issues to be determined as part of the review, and of the fact that they may have an opportunity to be heard at the review by submitting written comments not less than 10 working days before the review or by participating at the review. The court or agency shall notify the person representing the interests of the public, the child's counsel, the child's guardian ad litem, and the child's court−appointed special advocate 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 safety and 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, the child and the child's guardian, if any.

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 safely 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 or placed for adoption, with a guardian or in some other alternative permanent placement.

6. If the child has been placed outside of his or her home, as described in s. 48.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out−of−home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:

a. Being returned safely 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.

cg. Being placed with a guardian.

cm. Being placed in the home of a fit and willing relative of the child.

d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long−term foster care.

7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(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, the child's guardian ad litem and the child's court−appointed special advocate 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 rep-

resenting the interests of the public, the child's counsel, the child's guardian ad litem and the child's court−appointed special advocate 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, the child's court−appointed special advocate 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) PERMANENCY PLAN HEARING. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's counsel, the child's guardian ad litem, and the child's court−appointed special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public of the date, time, and place of the hearing.

(c) Any person who is provided notice of the hearing may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, treatment foster parent, operator of a facility in which a child is living, or relative with whom a child is living who receives notice of a hearing under par. (b) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the child's counsel or guardian ad litem, and to the child's court−appointed special advocate. Notwithstanding s. 48.78 (2) (a), the person representing the interests of the public, the child's counsel or guardian ad litem, and the child's court−appointed special advocate 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) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's court−appointed special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public. The court shall make the findings specified in sub. (5) (c) 7. on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 48.363 or order a change in placement under s. 48.357, as appropriate.

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

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of children outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for children to return safely 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; 1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275; 1997 a. 27, 35, 104, 237; 1999 a. 149; 2001 a. 2, 59, 69, 109.

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 Wis. 2d 222, 499 N.W.2d 219 (Ct. App. 1993).

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) 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 or adult expectant mother 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 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

(1b) If requested by the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report, or if requested by the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or child a copy of that report. If requested by the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, if requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, or if requested by an unborn child through the unborn child's guardian ad litem, a law enforce-

ment agency may, subject to official agency policy, provide to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem a copy of that report.

(1d) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report or upon the written permission of the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or child in the written permission. Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, or of an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission.

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 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 and ch. 938 or as permitted under this section or s. 48.375 (7) (e).

(ag) Upon request of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon request of the child, if 14 years of age or over, the court shall open for inspection by the parent, guardian, legal custodian or child the records of the court relating to that child, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian or child would result in imminent danger to anyone.

(aj) Upon request of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), upon request of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon request of an unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem the records of the court relating to that expectant mother, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon the written permission of the child, if 14 years of age or over, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or child in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(ap) Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), or of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(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.

(dm) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under ss. 767.45 to 767.60, the party's attorney or the guardian ad litem for the child who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child for the purpose of determining the paternity of the child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41 (1), the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by the requester its records relating to the paternity of the child or disclose to the requester those records.

(dr) Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(f) Upon request of the department of corrections to review court records for the purpose of obtaining information concerning a child required to register under s. 301.45, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any child who has been found in need of protection or services for an offense specified in s. 301.45 (1g) (a). The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(g) Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 938, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(h) Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a child, the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by an authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(5) (a) Any person who is denied access to a record under sub. (1), (1b) or (1d) may petition the court to order the disclosure of the records governed by the applicable subsection. 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, appropriate law enforcement agencies and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem 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 records of the child or expectant mother. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, the court shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making that determination, the court shall balance the interest of the petitioner in obtaining access to the record against the interest of the child or expectant mother in avoiding the stigma that might result from disclosure.

(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 records of the child or expectant mother. All records related to a decision under this subsection are confidential.

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; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82.

In the interest of fostering fair and efficient administration of justice, a circuit court has the power to order disclosure of police records. State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 Wis. 2d 435, 267 N.W.2d 309 (1978).

Section 967.06 gives the public defender the right to receive juvenile records of indigent clients notwithstanding s. 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 329 N.W.2d 275 (Ct. App. 1982).

In determining whether to release juvenile court records, the child's best interests are paramount. The child's interests must be weighed against the need of the party seeking the information. The child whose confidentiality interests are at stake must be represented. State v. Bellows, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998).

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) (a) and 938.396 (2) (a); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03−3018.

Juvenile officers are not required to provide information concerning juveniles to school officials. A school does not violate sub. (1) by using information obtained from an officer to take disciplinary actions against a student as long as the school does not reveal the reason for its action. 69 Atty. Gen. 179.

A sheriff's department may, when evaluating an individual for an employment position, consider information in its possession concerning the individual's juvenile record. 67 Atty. Gen. 327 is overruled. 79 Atty. Gen. 89.

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.

(1m) "Kinship care relative" means a person receiving payments under s. 48.57 (3m) (am) for providing care and maintenance for a child.

(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; 1995 a. 289.

Parents whose rights have been terminated do not inherit from a child; the child's siblings, whether parental rights as to them have been terminated or not, are the child's heirs. Estate of Pamanet, 46 Wis. 2d 514, 175 N.W.2d 234 (1970).

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.

(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 Wis. 2d xxv (1989); 1999 a. 83.

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]

The minimum information that must be found on the record to support a finding that a minor parent's consent was voluntary and informed is set forth. In Interest of D. L. S. 112 Wis. 2d 180, 332 N.W.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, which, subject to par. (c), shall be established by proving any of the following:

1. That the child has been left without provision for the child's 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.

1m. That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22 (14), or death.

1r. That a court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when the child was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

2. That 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) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

3. The child has been left by the parent with any 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 6 months 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) Abandonment is not established under par. (a) 2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a) 2. or 3., whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a) 2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

(1m) RELINQUISHMENT. Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the parent has relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger.

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services, which shall be established by proving any of the following:

(a) 1. That the child has been adjudged to be a child or an unborn child 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, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe 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.

(am) 1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability, which shall be established by proving 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 OR VISITATION. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

(5) CHILD ABUSE. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the

health of the child who is the subject of the petition and proving 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 a child has previously been removed from the parent's home pursuant to a court order under s. 48.345 after an adjudication that the child is in need of protection or services under s. 48.13 (3) or (3m).

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.

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

(7) INCESTUOUS PARENTHOOD. Incestuous parenthood, which shall be established by proving 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) HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first−degree intentional homicide in violation of s. 940.01, first−degree reckless homicide in violation of s. 940.02 or 2nd−degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first−degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

(9) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact−finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2), the mother of the child may be heard on her desire for the termination of the father's parental rights.

(9m) COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S CHILDREN. (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, "serious felony" means any of the following:

1. The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.

2. The commission of a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 if committed in this state.

3. The commission of a violation of s. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

(10) PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER CHILD. Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) or (10).

(b) That, within 3 years prior to the date the court adjudged the child who is the subject of the petition to be in need of protection or services as specified in par. (a), a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

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; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109.

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 court order to effect a termination of her parental rights. Lewis v. Lutheran Social Services, 68 Wis. 2d 36, 227 N.W.2d 643 (1975).

A termination order was not supported by sufficient findings when the findings merely repeated statutory language and made no determination of the best interests of the child. Termination of Parental Rights to T. R. M. 100 Wis. 2d 681, 303 N.W.2d 581 (1981).

A parent has constitutionally protected rights to the care, custody, and management of a child. In Interest of J. L. W. 102 Wis. 2d 118, 306 N.W.2d 46 (1981).

The dismissal of termination proceedings on grounds of abandonment because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required in one order. In Interest of K.K. 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

The abandonment period under sub. (1) (a) 3. need not immediately precede filing of the petition. If abandonment is found, termination is still discretionary. In Interest of T.P.S. 168 Wis. 2d 259, 483 N.W.2d 591 (Ct. App. 1992).

While the 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 the oral notice was given is not required in later termination proceedings under sub. (2) (a). In Interest of D.P. 170 Wis. 2d 313, 488 N.W.2d 133 (Ct. App. 1992).

A developmentally disabled father's allegation that the county, in violation of the Americans with Disabilities Act, did not take into account his disability in attempting to provide court ordered services was not a basis to attack a termination proceeding. The ADA did not place an added burden on the county to meet the requirements of sub. (2) (b). In Interest of Torrence P. 187 Wis. 2d 10, 522 N.W.2d 243 (Ct. App. 1994).

A child "left with" another person under sub. (1) (a) 3. may have been actively placed with the other person by the parent or allowed to live with the other person with the parent's knowledge. Interest of Christopher D. 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

"Disassociated" under sub. (1) (c) is not unconstitutionally vague. Disassociation means more than "failure to visit or communicate" under sub. (1) (a). Interest of Christopher D. 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

The respondent in a TPR case has the right to meaningfully participate; whether physical presence is required must be determined on a case by case basis. Telephone participation may be adequate. Interest of Christopher D. 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

A showing of abandonment under sub. (1) (a) 3. creates a rebuttable presumption that imposes on the parent the burden of disproving abandonment under sub. (1) (c) by showing by a preponderance of the evidence that the parent has not disassociated himself or herself from the child. Odd S.−G v. Carolyn S.−G, 194 Wis. 2d 366, 533 N.W.2d 794 (1995).

Termination under sub. (8), due to a murder occurring prior to the adoption of sub. (8), did not violate the prohibition against *ex post facto* laws and did not violate due

process, equal protection, or double jeopardy protections. Winnebago County DSS v. Darrell A. 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. State v. Patricia A.P. 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995), 95−1164.

Sub. (5) does not require an assessment of present and future behavior. The statute refers to past behavior that was a threat to the child's welfare. Jerry M. v. Dennis L. M. 198 Wis. 2d 10, 542 N.W.2d 162 (Ct. App. 1995), 95−0075.

For all terminations under sub. (5), there must be a showing that the parent has exhibited a pattern of abusive behavior and a showing under par. (a) or (b). A "conviction" under par. (a) is a conviction after the appeal as of right has been exhausted. Monroe County v. Jennifer V. 200 Wis. 2d 678, 548 N.W.2d 837 (Ct. App. 1996), 95−3062.

Sub. (7) is a constitutional part of a statutory scheme that is narrowly tailored to meet the state's compelling interests. State v. Allen M. 214 Wis. 2d 302, 571 N.W.2d 872 (Ct. App. 1997).

Venue becomes an issue only in the event that it is contested. The county where a child "resides" is the county of domicile. The county where a child "is present" is the county where the child is present at the time a petition is filed. State v. Corey J. G. 215 Wis. 2d 394, 572 N.W.2d 845 (1998).

When a parent is prohibited from visitation, communication by phone and letter is not prohibited, and sub. (1) (b) does not apply. Periods in which there has been no contact whatsoever will be counted under sub. (1) (a) 2. and 3. Carol B. v. Timothy N. 228 Wis. 2d 695, 598 N.W.2d 924 (Ct. App. 1999).

The rules of civil procedure apply to termination of parental rights proceedings. Directed verdicts are permissible. Door County DHFS v. Scott S. 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999).

A guardian ad litem's comments regarding the best interests of the child were not improper. Only when the jury is instructed that it should consider the best interests of the child is there reversible error. Door County DHFS v. Scott S. 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999).

Prior to determining that grounds existed to terminate parental rights, the circuit court had the duty at the fact−finding hearing to find by clear and convincing evidence that all of the elements of s. 48.415 (1) (a) 3. had been satisfied. By entering a default judgment against the mother on the issue of abandonment without first taking evidence, the circuit court did not make the finding. The error was subject to a harmless error analysis. Evelyn C.R. v. Tykila S. 2001 WI 110, 246 Wis. 2d 1, 629 N.W.2d 768.

In a case under sub. (4), a parent's right to meaningfully participate in the termination proceeding includes the right to present evidence at the fact−finding hearing regarding efforts to to meet the conditions for reestablishing visitation. It was error to restrict evidence to whether an order denying visitation had remained in effect for a year. State v. Frederick H. 2001 WI App 141, 246 Wis. 2d 215, 630 N.W.2d 734.

Events occurring prior to a CHIPS dispositional order are frequently relevant at a termination proceeding. A history of parental conduct may be relevant to predicting a parent's chances of complying with conditions in the future, despite failing to do so to date. La Crosse County Department of Human Services v. Tara P. 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194.

In determining whether "there is a substantial likelihood" that a parent will not meet conditions for the return of his or her children, a parent's relevant character traits and patterns of behavior and the likelihood that any problematic traits or propensities have been or can be modified in order to assure the safety of the children must be considered. La Crosse County Department of Human Services v. Tara P. 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194.

A mother's criminal offenses and sentences were relevant to whether she had failed to establish a substantial parental relationship with her children under sub. (6). State v. Quinsanna D. 2002 WI App 318, 259 Wis. 2d 429, 655 N.W.2d 752, 02−1919.

Partial summary judgment may be granted in the unfitness phase of a termination case if the moving party establishes that there is no genuine issue as to any material fact regarding the asserted grounds for unfitness, and, taking into consideration the heightened burden of proof specified in s. 48.31 (1) and required by due process, the moving party is entitled to judgment as a matter of law. Steven V. v. Kelley H. 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 831, 02−2860.

As applied in this case the incestuous parenthood ground under sub. (7) is not narrowly tailored to advance the compelling state interest underlying the statute. It is fundamentally unfair to terminate parental rights based solely on a parent's status as a victim of incest. Monroe County DHS v. Kelli B. 2004 WI 48, 271 Wis. 2d 51, 678 N.W.2d 856, 03−0060.

Jennifer V.'s holding is limited to appeals based on guilt or innocence. When a parent's pending appeal does not raise issues of guilt or innocence, "final judgment of conviction" in sub. (9m) means the judgment of conviction entered by the trial court, either after a verdict of guilty by the jury, a finding of guilty by the court when a jury is waived, or a plea of guilty or no contest. Reynaldo F. v. Christal M. 2004 WI App 106, ___ Wis. 2d ___, 684 N.W.2d 138, 03−2687.

A parent's prior convictions are not so prejudicial as to outweigh their probative value when the information would lead the jury to an understanding of why children are removed from the parent's home. Reynaldo F. v. Christal M. 2004 WI App 106, ___ Wis. 2d ___, 684 N.W.2d 138, 03−2687.

It is of no import that paternity was unadjudicated during the abandonment period, the statute still applies and the state can terminate a father's rights under sub. (1) (a) 3. State v. James P. 2004 WI App 124, ___ Wis. 2d ___, ___ N.W.2d ___, 04−0723.

Process is constitutionally due a natural parent at a state−initiated parental rights termination proceeding. A 3−factor test is discussed. Santosky v. Kramer, 455 U.S. 745 (1982).

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

48.417 Petition for termination of parental rights; when required. (1) FILING OR JOINING IN PETITION; WHEN REQUIRED. Subject to sub. (2), an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 shall file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official shall join in the petition, if any of the following circumstances apply:

(a) The child has been placed outside of his or her home, as described in s. 48.365 (1) or 938.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out−of−home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in by the last day of the 15th month, as described in this paragraph, for which the child was placed outside of his or her home.

(b) A court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when he or she was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court of competent jurisdiction found that the child was abandoned as described in this paragraph.

(c) A court of competent jurisdiction has found that the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, and that the victim of that violation is a child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

(d) A court of competent jurisdiction has found that the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

(2) FILING OR JOINING IN PETITION; WHEN NOT REQUIRED. Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c) or (d) may apply, an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 need not file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official need not join in the petition, if any of the following circumstances apply:

(a) The child is being cared for by a fit and willing relative of the child.

(b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

(c) The agency primarily responsible for providing services to the child and the family under a court order, if required under s. 48.355 (2) (b) 6. to make reasonable efforts to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child's permanency plan, the services necessary for the safe return of the child to his or her home.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

(3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition is filed or joined in as required under sub. (1), the agency primarily responsible for providing services to the child under a court order shall, during the pendency of the proceeding on the petition, work with the agency identified in the report under s. 48.425 (1) (f) that would be responsible for accomplishing the adoption of the child in processing and approving a qualified family for the adoption of the child.

(4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required under sub. (1), the person who filed or joined in the petition shall notify the department of that filing or joinder.

History: 1997 a. 237; 2001 a. 109.

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) One of the following:

1. A statement that consent will be given to termination of parental rights as provided in s. 48.41.

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.

(d) A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(1m) VISITATION OR CONTACT RIGHTS. (a) If the petition filed under sub. (1) includes a statement of the grounds for involuntary termination of parental rights under sub. (1) (c) 2., the petitioner may, at the time the petition under sub. (1) is filed, also petition the court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition under sub. (1). Any petition under this paragraph shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

(b) Subject to par. (e), the court may issue the temporary order ex parte or may refuse to issue the temporary order and hold a hearing on whether to issue an injunction. The temporary order is in effect until a hearing is held on the issuance of an injunction. The court shall hold a hearing on the issuance of an injunction on or before the date of the hearing on the petition to terminate parental rights under s. 48.422 (1).

(c) Notwithstanding any other order under s. 48.355 (3), the court, subject to par. (e), may grant an injunction prohibiting the respondent from visiting or contacting the child if the court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the court dismisses the petition for termination of parental rights under s. 48.427 (2) or issues an order terminating parental rights under s. 48.427 (3).

(d) A temporary order under par. (b) or an injunction under par. (c) suspends the portion of any order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 setting rules of parental visitation until the termination of the temporary order under par. (b) or injunction under par. (c).

(e) 1. Except as provided in subd. 2., the court shall issue a temporary order and injunction prohibiting a parent of a child from visitation or contact with the child if the parent has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

2. Subdivision 1. does not apply if the court determines by clear and convincing evidence that the visitation or contact would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(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 who shall be provided notice as required under sub. (2g).

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

(2g) NOTICE REQUIRED. (a) In addition to causing the summons and petition to be served as required under sub. (2), the petitioner shall also notify any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child of all hearings on the petition. The first notice to any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written, shall have a copy of the petition attached to it, shall state the nature, location, date and time of the initial hearing and shall be mailed to the last−known address of the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2). 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.

(am) The court shall give a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (a) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under par. (a) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(b) Failure to give notice under par. (a) to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or other physical

custodian described in s. 48.62 (2) is not given notice of a hearing under par. (a), that person may request a rehearing on the matter at any time prior to the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall order a rehearing.

(2m) NOTICE NOT REQUIRED. Except as provided in this subsection, 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 in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this subsection has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this subsection for conduct which may have led to the child's conception. A person who under this subsection is not given notice does not have standing to appear and contest a petition for the termination of his parental rights. This subsection does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

(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 30 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 acknowledged under s. 767.62 (1) or a substantially similar law of another state or 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 30 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 Wis. 2d xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395, 446; 1995 a. 108, 225, 275, 352; 1997 a. 35, 80, 191, 237; 1999 a. 9, 83.

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]

Guardianship and TPR proceedings are custody proceedings, guardianship and TPR determinations are custody determinations, and guardianship and TPR determinations are custody decrees, all governed by ch. 822. In Interest of A.E.H. 161 Wis. 2d 277, 468 N.W.2d 190 (1991).

Sub. (2m) denies a putative father standing to contest the alleged grounds for termination when the child was conceived as the result of sexual assault. Termination of Parental Rights to A. M. 176 Wis. 2d 673, 500 N.W.2d 649 (1993).

Sub. (2) (d) requires consideration in each case of whether ch. 822 applies but does not require the application of ch. 822 to intrastate cases. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.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 Wis. 2d 114, 507 N.W.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 Wis. 2d 395, 513 N.W.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.

(bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913 (7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged to presumed father of the child or are impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child 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 dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1). This paragraph does not apply if the petition was filed with a petition for adoptive placement under s. 48.837 (2).

(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; 1997 a. 104.

The court erred by failing to inform parents of the right to jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 342 N.W.2d 410 (1984).

Concurrent TPR/adoption proceedings under s. 48.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W.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 Wis. 2d 887, 512 N.W.2d 227 (Ct. App. 1994).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (1). There are no provisions for waiver of time limits, and the only provisions for delays, continuances, and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927.

This section does not require the circuit court to advise nonpetitioning parties of the right under sub. (5) to a continuance to consult with counsel regarding judicial substitution. Steven V. v. Kelley H. 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 831, 02−2860.

Due process does not require appointment of counsel for indigent parents in every parental status termination proceeding. Lassiter v. Dept. of Social Services, 452 U.S. 18 (1981).

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

History: 1979 c. 330.

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

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

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

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

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

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

(4) If grounds for the termination of parental rights are found 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.

Although the best interests of the child standard does not apply to the fact−finding hearing, the guardian ad litem can represent the interests of the child to develop the facts as they relate to whether the grounds for termination exist. When a jury is the fact−finder, the guardian ad litem should be permitted to exercise peremptory challenges in jury selection. Interest of C.E.W. 124 Wis. 2d 47, 368 N.W.2d 47 (1985).

Despite jury findings that grounds for termination exist, the court may dismiss a termination petition if evidence does not support the jury's finding or if the evidence of unfitness is not so egregious as to warrant termination; whether the evidence sup-

ports termination is a matter of discretion. In Interest of K.D.J. 163 Wis. 2d 90, 470 N.W.2d 914 (1991).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (4). There are no provisions for waiver of time limits, and the only provisions for delays, continuances and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927.

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 safely 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 safely 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 (3m) (a) 1. to 4. and include a presentation of the factors which might prevent adoption, those which would facilitate it, and the agency which would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427 (3m) (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. The plan shall include a recommendation as to the agency to be named guardian of the child or a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the 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; 1995 a. 275; 1997 a. 237.

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.

When 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 Wis. 2d 114, 507 N.W.2d 94 (1993).

A termination of parental rights works a legal severance of the relationship between the child and the child's birth family. Sub. (3) (c) requires an examination of the harmful effect of the legal severance on the child's relationships with the birth family. The court may consider an adoptive parent's promise to continue the relationship, but it is not bound to hinge its determination on that legally unenforceable promise. State v. Margaret H. 2000 WI 42, 234 Wis. 2d 606, 610 N.W.2d 475.

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.

(1m) In addition to any evidence presented under sub. (1), the court shall give the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(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.

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, 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 or if the relative is a kinship care relative.

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.

(3p) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has been appointed under s. 48.977, the court may enter one of the orders specified in sub. (3m). If the court enters an order under this subsection, the court shall terminate the guardianship under s. 48.977.

(4) If the rights of one or both parents are terminated under sub. (3), the court may enter an order placing the child in sustaining care under s. 48.428.

(6) If an order is entered under sub. (3), 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, 48.433 and 48.434.

(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).

(7) (a) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10).

(b) In addition to the notice permitted under par. (a), any written order under sub. (3) may notify the parent or parents of the information specified in par. (a).

History: 1979 c. 330; 1981 c. 81, 359; 1985 a. 70, 176; 1995 a. 275, 289; 1997 a. 80, 104, 237.

Once a basis for termination has been found by the jury and confirmed with a finding of unfitness by the court, the court must move to the dispositional hearing in which the prevailing factor is the best interests of the child. A court should not dismiss a petition for termination at a dispositional hearing unless it can reconcile dismissal with the best interests of the child. Sheboygan County D.H.S.S. v. Julie A.B. 2002 WI 95, 255 Wis. 2d 170, 648 N.W.2d 402.

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) (a) Except as provided in par. (b), when a court places a child in sustaining care after an order under s. 48.427 (4), the court shall transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent, licensed treatment foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

(b) When a court places a child in sustaining care after an order under s. 48.427 (4) with a person who has been appointed as the guardian of the child under s. 48.977 (2), the court may transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, that licensed foster parent, licensed treatment foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3). If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4., the court shall terminate the guardianship under s. 48.977.

(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 subch. V of ch. 115 and s. 118.125.

(4) Before a licensed foster parent, licensed treatment foster parent or kinship care relative may be appointed as a sustaining parent, the foster parent, treatment foster parent or kinship care relative shall execute a contract with the agency responsible for providing services to the child, in which the foster parent, treatment foster parent or kinship care relative 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) (a) Except as provided in par. (b), the court may order or prohibit visitation by a birth parent of a child placed in sustaining care.

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a birth parent of a child who has been placed in sustaining care if the birth parent has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other birth parent, and the conviction has not been reversed, set aside or vacated.

1m. Except as provided in subd. 2., if a birth parent who is granted visitation rights with a child under par. (a) is convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the child's other birth parent, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the birth parent from having visitation with the child on petition of the child, the guardian or legal custodian of the child, or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the birth parent.

2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

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; 1995 a. 275, 289; 1997 a. 27, 164; 1999 a. 9.

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), the order shall contain all of the following:

(a) The identity of any agency or individual that has received guardianship of the child or 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.

(d) A finding that the termination of parental rights is in the best interests of the child.

(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 and to the person appointed as the guardian of the child under s. 48.977 (2). 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, treatment foster parent, other physical custodian described in s. 48.62 (2) 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 (3m) (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 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237.

The appeal process in a termination case must be commenced within 30 days after the order is entered. In Interest of J.D. 106 Wis. 2d 126, 315 N.W.2d 365 (1982).

Termination has the same effect on relationships between members of the biological parents' families and the child as it has on the parent−child relationship. Equitable considerations did not form a basis to allow biological grandparents to obtain visitation rights after termination and adoption. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

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, or agency contracted with under sub. (9), 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, or agency contracted with under sub. (9), any relevant medical or genetic information about the child or the child's birth parents, and the department or agency shall maintain the information in the centralized birth record file.

(3) (a) The department, or agency contracted with under sub, (9), 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, or agency contracted with under sub. (9), 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, or agency contracted with under sub. (9), based on ability to pay. The fee may not be more than $150 and may be waived by the department or agency.

(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, or agency contracted with under sub. (9), the person may request that the department or agency 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, or agency contracted with under sub. (9), shall undertake a diligent search for the individual's or adoptee's parents.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (9), 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, or agency contracted with under sub. (9), 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, or agency contracted with under sub. (9), 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, or agency contracted with under sub. (9), 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 and may contract with an agency to administer this section.

History: 1981 c. 359; 1983 a. 447, 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27.

Cross Reference: See also ch. HFS 53, Wis. adm. code.

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, or agency contracted with under sub. (11), an affidavit authorizing the department or agency 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 or agency 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, or agency contracted with under sub. (11), 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, or agency contracted with under sub. (11), shall require the requester to provide adequate identification.

(5) The department, or agency contracted with under sub. (11), shall disclose the requested information in either of the following circumstances:

(a) The department, or agency contracted with under sub. (11), 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, or agency contracted with under sub. (11), 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 or agency is not required to conduct a search.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (11), 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, or agency contracted with under sub. (11), 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, or agency contracted with under sub. (11), 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, or agency contracted with under sub. (11), 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, or agency contracted with under sub. (11), shall so inform the requester. The department or agency 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, or agency contracted with under sub. (11), 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 or agency.

(8m) If the department, or agency contracted with under sub. (11), 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 and may contract with an agency to administer this section.

History: 1981 c. 359, 391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27.

Cross Reference: See also ch. HFS 53, Wis. adm. code.

48.434 Release of identifying information by an agency when authorization is granted. (1) DEFINITIONS. In this section:

(a) "Adoptive parent" means a person who has adopted a child in this state or who has adopted in another state a child who was placed for adoption with that person in this state.

(b) "Birth parent" has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the birth parent's identity and location to one or both adoptive parents of the child.

(3) Any adoptive parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the adoptive parent's identity and location to one or both birth parents of the child.

(4) A written authorization filed under sub. (2) or (3) may be revoked at any time by notifying the agency in writing.

(5) Upon the request of an adoptive parent of a child, the agency receiving the request shall provide to the adoptive parent any available information about the identity and location of a birth parent of the child if the agency has on file an unrevoked written authorization filed by that birth parent under sub. (2) authorizing the release of that information to the adoptive parent.

(6) Upon the request of a birth parent of a child, the agency receiving the request shall provide to the birth parent any available information about the identity and location of an adoptive parent of the child if the agency has on file an unrevoked written authorization filed by that adoptive parent under sub. (3) authorizing the release of that information to the birth parent.

(7) This section does not apply if the adopted child is 21 years of age or over.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) An agency may assess a reasonable fee for responding to a request for information or a request to file a written authorization under this section.

(10) No agency may contact any person for the purpose of determining whether the person wishes to authorize the agency to release information under this section. An agency may contact the birth parent or adoptive parent of a child who was adopted before April 29, 1998, one time, by mail, to inform them of the procedure by which identifying information may be released under this section.

(11) A written authorization filed with an agency under this section shall be notarized.

History: 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

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 17 OR OLDER

48.44 Jurisdiction over persons 17 or older. (1) The court has jurisdiction over persons 17 years of age or older as provided under ss. 48.133, 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; 1995 a. 27; 1997 a. 35, 292.

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. 48.13 it appears that any person 17 years of age 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.

(am) If in the hearing of a case of an unborn child and the unborn child's expectant mother alleged to be in a condition described in s. 48.133 it appears that any person 17 years of age or over has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the unborn child and expectant mother, the judge may make orders with respect to the conduct of such person in his or her relationship to the unborn child and expectant mother.

(b) An act or failure to act contributes to a condition of a child as described in s. 48.13 or an unborn child and the unborn child's expectant mother as described in s. 48.133, although the child is not actually adjudicated to come within the provisions of s. 48.13 or the unborn child and expectant mother are not actually adjudicated to come within the provisions of s. 48.133, 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. 48.13 or the unborn child and expectant mother to come within the provisions of s. 48.133.

(1m) (a) In a proceeding in which a child has been found to be in need of protection or services under s. 48.13, 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) 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.

(1r) In a proceeding in which an unborn child has been found to be in need of protection or services under s. 48.133, the judge may impose on the expectant mother any disposition permitted under s. 48.347 (1) to (6).

(2) No order under sub. (1) (a) or (am) 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 (am) 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.

(3) If it appears at a court hearing that any person 17 years of age 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; 1995 a. 27, 77; 1997 a. 35, 292.

Involuntary commitment was not authorized by this section. Contempt In Interest of J. S., 137 Wis. 2d 217, 404 N.W.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 subs. (1m), (2) and (3), the child whose status is adjudicated by the court, the parent, guardian or legal custodian of that child, the unborn child whose status is adjudicated by the court or the expectant mother of that unborn child 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.

(1m) 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 in an order entered under s. 48.43 or an order adjudicating paternity under subch. VIII may, within the time permitted under this subsection, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, unless within that one−year period a court in this state or in another jurisdiction enters an order granting adoption of the child, in which case a petition under this subsection shall be filed before the date on which the order granting adoption is entered or within 30 days after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, whichever is later.

(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 30 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 (7m), in which case the motion shall be filed within the time permitted by s. 809.107 (5). 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.

(3) An adoptive parent who has been granted adoption of a child under s. 48.91 (3) may not petition the court for a rehearing under sub. (1) or move the court under s. 806.07 for relief from the order granting adoption. A petition for termination of parental rights under s. 48.42 and an appeal to the court of appeals shall be the exclusive remedies for an adoptive parent who wishes to end his or her parental relationship with his or her adopted child.

History: 1977 c. 449; 1979 c. 300; 1987 a. 383; Sup. Ct. Order, 146 Wis. 2d xxxiii (1988); 1995 a. 275; 1997 a. 104, 114, 252, 292.

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]

Affidavits by a mother that she consented to a termination of her parental rights under duress and by her attorney as to what he expected to prove were not sufficient for a rehearing. Schroud v. Milwaukee County Department of Public Welfare, 53 Wis. 2d 650, 193 N.W.2d 671 (1972).

SUBCHAPTER XI

AUTHORITY

48.48 Authority of department. The department shall have authority:

(1) To promote the enforcement of the laws relating to nonmarital children, children in need of protection or services including developmentally disabled children and unborn children in need of protection or services and to take the initiative in all matters involving the interests of those children and unborn children when adequate provision for those interests is not made. This duty shall be discharged in cooperation with the courts, county departments, licensed child welfare agencies and with parents, expectant mothers and other individuals interested in the welfare of children and unborn 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 guardianship of children when appointed by the court, and to provide special treatment or 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.

(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) (a) 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) (a).

(10) To license child welfare agencies and day care centers as provided in s. 48.66 (1) (a).

(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 (3) (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.

(15) To license group homes as provided in s. 48.625.

(16) To establish and enforce standards for services provided under ss. 48.345 and 48.347.

(16m) To employ under the unclassified service in an office of the department that is located in a 1st class city a director of the office of urban development who shall be appointed by the secretary to serve at the pleasure of the secretary and who shall coordinate the provision of child welfare services in a county having a population of 500,000 or more with the implementation of the Wisconsin works program under ss. 49.141 to 49.161 in a county having a population of 500,000 or more.

(17) (a) In a county having a population of 500,000 or more, to administer child welfare services and to expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare services by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall also have authority to do all of the following:

1. Investigate the conditions surrounding nonmarital children, children in need of protection or services and unborn children in need of protection or services 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 department shall offer social services to the caretaker of any child, and to the expectant mother of any unborn child, who is referred to the department under the conditions specified in this subdivision. 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.

2. Accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355, and to provide special treatment or care for children and expectant mothers if ordered by the court and if providing special treatment or care is not the responsibility of the county department under s. 46.215, 51.42, or 51.437. A court may not order the department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this subdivision.

3. Provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing the children in licensed foster homes, treatment foster homes or group homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for those children by licensed child welfare agencies, except that the department may not purchase the educational component of private day treatment programs 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.

4. 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.

5. Place children in a county children's home in the county, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption.

6. Provide services to the court under s. 48.06.

7. Contract with any parent or guardian or other person for the care and maintenance of any child.

8. License foster homes or treatment foster homes in accordance with s. 48.75.

9. Use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

10. Administer kinship care and long−term kinship care as provided in s. 48.57 (3m), (3n) and (3p).

11. Contract with the county department under s. 46.215, 51.42 or 51.437 or with a licensed child welfare agency to provide any of the services that the department is authorized to provide under this chapter.

(b) In performing the functions specified in par. (a), the department may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children and unborn children in the county.

(c) From the appropriations under s. 20.435 (3) (cx), (gx), (kw) and (mx), the department may provide funding for the maintenance of any child who meets all of the following criteria:

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. 20.435 (3) (cx) or 46.495 (1) (d) immediately prior to his or her 18th birthday.

4. Is living in a foster home, treatment foster home, group home, or residential care center for children and youth.

(d) The funding provided for the maintenance of a child under par. (c) shall be in an amount equal to that which the child would receive under s. 20.435 (3) (cx), (gx), (kw) and (mx) or 46.495 (1) (d) if the child were 17 years of age.

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; 1995 a. 27 ss. 2526 to 2534m, 9126 (19), 9145 (1); 1995 a. 77; 1997 a. 27, 35, 80, 105, 292; 1999 a. 9; 2001 a. 38, 59, 69.

Cross Reference: See also ch. HFS 51, Wis. adm. code.

An allegation that the department failed to adopt rules or to exercise supervision over a local social service agency and that those failures led to a deprivation of child custody without due process stated a cause of action for deprivation of civil rights. Roe v. Borup, 500 F. Supp. 127 (1980).

The state has ultimate foster care responsibility, and dismissal of a 42 USC 1983 action against the state for civil rights violations by a county agency was not appropriate. Jeanine B. by Blondin v. Thompson, 877 F. Supp. 1268 (1995).

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.

48.52 Facilities for care of children and adult expectant mothers 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; 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.

(1m) FACILITIES MAINTAINED OR USED FOR ADULT EXPECTANT MOTHERS. The department may maintain or use the following facilities for adult expectant mothers in its care:

(a) Community−based residential facilities, as defined in s. 50.01 (1g).

(b) Inpatient facilities, as defined in s. 51.01 (10).

(c) Other facilities determined by the department to be appropriate for the adult expectant mother.

(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 and the expectant mothers of unborn children in its care. Placements in institutions for the mentally ill or developmentally disabled shall be made in accordance with ss. 48.14 (5), 48.347 (6) 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 whom the department has 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; 1995 a. 27 ss. 2541 to 2541r, 9126 (19); 1995 a. 77; 1997 a. 292.

A detention home is not an 'other facility' under sub. (1). State ex rel. Harris v. Larson, 64 Wis. 2d 521, 219 N.W.2d 335 (1974).

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.

Foster homes leased by the department pursuant to sub. (2) 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 s. 13.48 (13). The lessor remains responsible for property tax. 65 Atty. Gen. 93.

48.547 Alcohol and other drug abuse program. (1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by children and the expectant mothers of unborn 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 and the expectant mothers of unborn children for alcohol and other drug abuse. To reduce the incidence of alcohol and other drug abuse by children and the expectant mothers of unborn 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 and the expectant mothers of unborn children by establishing a juvenile and expectant mother alcohol and other drug abuse 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 and expectant mothers with needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter and ch. 938 in the counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.435 (7) (mb) that is available for the program, the department shall select counties to participate in the program. Unless a county department of human services has been estab-

lished under s. 46.23 in the county that is seeking to implement a 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.

(3) MULTIDISCIPLINARY SCREEN. The department shall provide a multidisciplinary screen for the program. The screen shall be used by an intake worker to determine whether or not a child or an expectant mother of an unborn child is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen children and expectant mothers for:

(a) Family dysfunction.

(b) School, truancy or work problems.

(c) Mental health problems.

(d) Delinquent or criminal behavior patterns.

(4) ASSESSMENT CRITERIA. The department shall provide uniform alcohol and other drug abuse assessment criteria to be used in the pilot program under ss. 48.245 (2) (a) 3. and 48.295 (1). An approved treatment facility that assesses a person under s. 48.245 (2) (a) 3. or 48.295 (1) 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; 1995 a. 77, 448; 1997 a. 292.

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 and state adoption center. (1) 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 and 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 (3) (dg), the department may provide not more than $163,700 in fiscal year 2001−02 and not more than $171,300 in each fiscal year thereafter as grants to individuals and private agencies to provide adoption information exchange services and to operate the state adoption center.

(2) The department shall promulgate rules governing the adoption information exchange and rules specifying the functions of the state adoption center. The rules specifying the functions of the state adoption center shall include all of the following:

(a) Training persons who provide counseling to adolescents including school counselors, county or department employees providing child welfare services under s. 48.56 or 48.561 and employees of a clinic providing family planning services, as defined in s. 253.07 (1) (b).

(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: 1983 a. 27; 1995 a. 266; 1997 a. 35; 1999 a. 9 ss. 1135 to 1139; 2001 a. 16.

Cross Reference: See also chs. HFS 42, 50, and 51, Wis. adm. code.

SUBCHAPTER XII

CHILD WELFARE SERVICES

48.56 Child welfare services in counties having populations of less than 500,000. (1) Each county having a population of less than 500,000 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; 1997 a. 27.

48.561 Child welfare services in a county having a population of 500,000 or more. (1) The department shall provide child welfare services in a county having a population of 500,000 or more.

(2) The department shall employ personnel in a county having a population of 500,000 or more who devote all of their time directly or indirectly to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

(3) (a) A county having a population of 500,000 or more shall contribute $58,893,500 in each state fiscal year for the provision of child welfare services in that county by the department. That contribution shall be made as follows:

1. Through a reduction of $37,209,200 from the amount distributed to that county under s. 46.40 (2) in each state fiscal year.

2. Through a reduction of $1,583,000 from the amount distributed to that county under s. 46.40 (2m) (a) in each state fiscal year.

3. Through a deduction of $20,101,300 from any state payment due that county under s. 79.03, 79.04, 79.058, 79.06, or 79.08 as provided in par. (b).

(b) The department of administration shall collect the amount specified in par. (a) 3. from a county having a population of 500,000 or more by deducting all or part of that amount from any state payment due that county under s. 79.03, 79.04, 79.058, 79.06, or 79.08. The department of administration shall notify the department of revenue, by September 15 of each year, of the amount to be deducted from the state payments due under s. 79.03, 79.04, 79.058, 79.06, or 79.08. The department of administration shall credit all amounts collected under this paragraph to the appropriation account under s. 20.435 (3) (kw) and shall notify the county from which those amounts are collected of that collection. The department may not expend any moneys from the appropriation account under s. 20.435 (3) (cx) for providing services to children and families under s. 48.48 (17) until the amounts in the appropriation account under s. 20.435 (3) (kw) are exhausted.

History: 1997 a. 27, 237; 1999 a. 9; 2001 a. 16.

48.57 Powers and duties of department and 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 by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall have the authority specified in s. 48.48 (17). A county department shall have the authority:

(a) To investigate the conditions surrounding nonmarital children, children in need of protection or services, including developmentally disabled children, and unborn children in need of protection or services 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, and to the expectant mother of any unborn 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 those laws.

(b) To accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355 and to provide special treatment or care for children and expectant mothers if ordered by the court. A court may not order a county department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this paragraph.

(c) To provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing those children in licensed foster homes, treatment foster homes or group homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for those children by licensed child welfare agencies, except that the county department may 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 and if contracted to do so by the department, 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 of health and family services or the department of corrections, to provide service for any child or expectant mother of an unborn child in the care of those departments.

(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, to accept guardianship, when appointed by the court, of a child whom the county department has placed in a foster home or treatment foster home under a court order or voluntary agreement under s. 48.63 and to place that child under its guardianship for adoption by the foster parent or treatment foster parent.

(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 and unborn children in the county.

(3) (a) From the reimbursement received under s. 46.495 (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. 46.495 (1) (d) immediately prior to his or her 18th birthday; and

4. Is living in a foster home, treatment foster home, group home, or residential care center for children and youth.

(b) The funding provided for the maintenance of a child under par. (a) shall be in an amount equal to that which the child would receive under s. 46.495 (1) (d) if the child were 17 years of age.

(3m) (a) In this subsection:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full−time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

2. "Kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great−great, whether by blood, marriage or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriation under s. 20.435 (3) (kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of $215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

4. The county department or department conducts a background investigation under sub. (3p) of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative's home to determine if the kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

5. The kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The kinship care relative is not receiving payments under sub. (3n) with respect to the child.

6. The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

(ar) The department shall promulgate rules to provide assessment criteria for determining whether a kinship care relative who is providing care and maintenance for a child is eligible to receive payments under par. (am). The rules shall also provide that any criteria established under the rules shall first apply to applications for payments under par. (am) received, and to reviews under par. (d) conducted, on the effective date of those rules.

(b) 1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child who is the beneficiary of a payment under this subsection is also the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3n) or s. 48.62 (4) for that child.

(d) A county department or, in a county having a population of 500,000 or more, the department shall review a placement of a child for which the county department or department makes payments under par. (am) not less than every 12 months after the county department or department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 2., 5. or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g) 1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

(3n) (a) In this subsection:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full−time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

2. "Long−term kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great−great, whether by blood, marriage or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriation under s. 20.435 (3) (kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make monthly payments for each child in the amount specified in sub. (3m) (am) (intro.) to a long−term kinship care relative who is providing care and maintenance for that child if all of the following conditions are met:

1. The long−term kinship care relative applies to the county department or department for payments under this subsection and provides proof that he or she has been appointed as the guardian of the child under s. 48.977 (2).

2. The county department or department inspects the long−term kinship care relative's home, interviews the long−term kinship care relative and determines that long−term placement with the long−term kinship care relative is in the best interests of the child.

4. The county department or department conducts a background investigation under sub. (3p) of the long−term kinship care

relative, the employees and prospective employees of the long−term kinship care relative who have or would have regular contact with the child for whom the payments would be made and any other adult resident, as defined in sub. (3p) (a), of the long−term kinship care relative's home to determine if the long−term kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that are likely to adversely affect the child or the long−term kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1m. and 2m., the long−term kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the long−term kinship care relative's ability to care for the child and that, to the best of the long−term kinship care relative's knowledge, no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the long−term kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the long−term kinship care relative's ability to care for the child.

5. The long−term kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The long−term kinship care relative is not receiving payments under sub. (3m) with respect to the child.

5r. The child for whom the long−term kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

6. The long−term kinship care relative and the county department or department enter into a written agreement under which the long−term kinship care relative agrees to provide care and maintenance for the child and the county department or department agrees, subject to sub. (3p) (hm), to make monthly payments to the long−term kinship care relative at the rate specified in sub. (3m) (am) (intro.) until the earliest of the following:

a. The date on which the child attains the age of 18 years or, if on that date the child is a full−time student in good academic standing at a secondary school or its vocational or technical equivalent and is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma, the date on which the child is granted a high school or high school equivalency diploma or the date on which the child attains the age of 19 years, whichever occurs first.

b. The date on which the child dies.

c. The date on which the child is placed outside the long−term kinship care relative's home under a court order or under a voluntary agreement under s. 48.63 (1) or (5) (b).

d. The date on which the child ceases to reside with the long−term kinship care relative.

e. The date on which the long−term kinship care's guardianship under s. 48.977 terminates.

f. The date on which the child moves out of the state.

(ar) Subject to sub. (3p) (fm) 1m. and (hm), a county department or, in a county having a population of 500,000 or more, the department shall enter into an agreement under par. (am) 6. if all of the following conditions are met:

1. All of the conditions in par. (am) 1. to 5r. are met.

2. The applicant has expressed a willingness to enter into the agreement.

(b) 1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any long−term kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child is the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A long−term kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3m) or s. 48.62 (4) for that child.

(d) The county department or, in a county having a population of 500,000 or more, the department shall, at least once every 12 months after the county department or department begins making payments under this subsection, determine whether any of the events specified in par. (am) 6. a. to f. have occurred. If any such events have occurred, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 2., 5., 5m. or 5r. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g) 1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population

of 500,000 or more, the subunit of the department administering of the long−term kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

(3p) (a) In this subsection, "adult resident" means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n) with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6−month period at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n).

(b) 1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of the applicant.

2. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3m) at the time of review under sub. (3m) (d) or at any other time that the county department or department of health and family services considers to be appropriate.

3. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3n) at any time that the county department or department of health and family services considers to be appropriate.

(c) 1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall, in addition to the investigation under par. (b) 1., conduct a background investigation of all employees and prospective employees of the applicant who have or would have regular contact with the child for whom those payments are being made and of each adult resident.

2. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees of any person who is receiving payments under sub. (3m) who have or would have regular contact with the child for whom those payments are being made and of each adult resident at the time of review under sub. (3m) (d) or at any other time that the county department or department of health and family services considers to be appropriate.

2m. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees of any person who is receiving payments under sub. (3n) who have or would have regular contact with the child for whom payments are being made and of each adult resident at any time that the county department or department of health and family services considers to be appropriate.

3. Before a person who is receiving payments under sub. (3m) or (3n) may employ any person in a position in which that person would have regular contact with the child for whom those payments are being made or permit any person to be an adult resident, the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of the prospective employee or prospective adult resident unless that person has already been investigated under subd. 1., 2. or 2m.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department or, in a county having a population of 500,000 or more, the department of health and family services determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the county department or department of health and family services shall require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the county department or, in a county having a population of 500,000 or more, the department of health and family services with all of the following information:

1. The person's name.

2. The person's social security number.

3. Other identifying information, including the person's birthdate, gender, race and any identifying physical characteristics.

4. Information regarding the conviction record of the person under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule.

(fm) 1. The county department or, in a county having a population of 500,000 or more, the department of health and family services may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m) (am) 4m. The county department or department of health and family services may not finally approve the making of payments under sub. (3m) unless the county department or department of health and family services receives information from the department of justice indicating that the conviction record of the applicant under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. or payment is approved under par. (h) 4. The county department or department of health and family services may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

1m. The county department or, in a county having a population of 500,000 or more, the department of health and family services may not enter into the agreement under sub. (3n) (am) 6. unless the county department or department of health and family services receives information from the department of justice relating to the conviction record of the applicant under the law of this state and that record indicates either that the applicant has not been arrested or convicted or that the applicant has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that the director or person designated by the secretary determines is likely to adversely affect the child or the long−term kinship care relative's ability to care for the child. The county department or, in a county having a population of 500,000 or more, the department of health and family services may make pay-

ments under sub. (3n) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines is likely to adversely affect the child or the long−term kinship care relative's ability to care for the child.

2. A person receiving payments under sub. (3m) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department of health and family services that the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payments under sub. (3m) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department of health and family services receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises the person receiving payments under sub. (3m) or until a decision is made under par. (h) 4. to permit a person who is receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or to permit a person to be an adult resident and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises the person receiving payments under sub. (3m). A person receiving payments under sub. (3m) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department or, in a county having a population of 500,000 or more, the department of health and family services that the federal bureau of investigation indicates that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

2m. A person receiving payments under sub. (3n) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department of health and family services that, to the best of his or her knowledge, the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payment under sub. (3n) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department of health and family services receives information from the department of justice relating to the person's conviction record under the law of this state and that record indicates either that the person has not been arrested or convicted or that the person has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the long−term kinship care relative's ability to care for the child and the county department or department of health and family services so advises the person receiving payments under sub. (3n). A person receiving payments under sub. (3n) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department or, in a county having a population of 500,000 or more, the department of health and family services that the federal bureau of investigation indicates that the person's conviction record under the law of any other state or under federal law is satisfactory because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines is likely to adversely affect the child or the long−term kinship care relative's ability to care for the child.

(g) Except as provided in par. (h), the county department or, in a county having a population of 500,000 or more, the department of health and family services may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 961 that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 961 that is punishable as a felony if committed in this state.

2. The person has had imposed on him or her a penalty specified in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.62, 939.621, 939.63 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the person would be subject to a penalty specified in any of those sections if convicted in this state.

3. The person has been convicted of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, if committed in this state, except that a county department or, in a county having a population of 500,000 or more, the department of health and family services may make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may employ in a position in which the person would have regular contact with the child for whom those payments are being made or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31 or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31 or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(h) 1. A person who is denied payments under sub. (3m) for a reason specified in par. (g) 1., 2. or 3. or a person who is prohibited from employing a person in a position in which that person would have regular contact with the child for whom payments under sub. (3m) are being made from permitting a person to be an adult resident for a reason specified in par. (g) 1., 2. or 3. may request that the denial of payments or the prohibition on employment or being an adult resident be reviewed.

2. The request for review shall be filed with the director of the county department or, in a county having a population of 500,000 or more, with the person designated by the secretary of health and family services to receive requests for review filed under this sub-

division. If the governing body of a federally recognized American Indian tribe or band has entered into an agreement under sub. (3t) to administer the program under this subsection and sub. (3m), the request for review shall be filed with the person designated by that governing body to receive requests for review filed under this subdivision.

3. The director of the county department, the person designated by the governing body of a federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services shall review the denial of payments or the prohibition on employment or being an adult resident to determine if the conviction record on which the denial or prohibition is based includes any arrests, convictions or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child. In reviewing the denial or prohibition, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services shall consider, but not be limited to, all of the following factors:

a. The length of time between the date of the arrest, conviction or of the imposition of the penalty and the date of the review.

b. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.

c. Whether making an exception to the denial or prohibition would be in the best interests of the child.

4. If the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services determines that the conviction record on which the denial of payments or the prohibition on employment or being an adult resident is based does not include any arrests, convictions or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services may approve the making of payments under sub. (3m) or may permit a person receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident.

5. A decision under this paragraph is not subject to review under ch. 227.

(hm) A county department or, in a county having a population of 500,000 or more, the department may not make payments to a person under sub. (3n) and a person receiving payments under sub. (3n) may not employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident if the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this paragraph determines that the person has any arrest or conviction that is likely to adversely affect the child or the long−term kinship care relative's ability to care for the child.

(i) A county department and, in a county having a population of 500,000 or more, the department of health and family services shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation. Such information is not subject to inspection or copying under s. 19.35.

(j) A county department or, in a county having a population of 500,000 or more, the department of health and family services may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

(3t) Notwithstanding subs. (3m), (3n) and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe or band to allow that governing body to administer the program under subs. (3m), (3n) and (3p) within the boundaries of that reservation. Any agreement under this subsection relating to the administration of the program under sub. (3m) shall specify the person with whom a request for review under sub. (3p) (h) 2. may be filed and the person who has been designated by the governing body to conduct the review under sub. (3p) (h) 3. and make the determination under sub. (3p) (h) 4. Any agreement under this subsection relating to the administration of the program under sub. (3n) shall specify who is to make any determination as to whether a conviction record is satisfactory.

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; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036−4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

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 Wis. 2d 521, 219 N.W.2d 335 (1974).

County agencies providing child welfare services do not have authority under sub. (1) or s. 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 juveniles referred by the county department under s. 46.215, if the delinquent juveniles are placed in separate facilities;

(c) Provide temporary shelter care for children in need of protection or services and delinquent juveniles; provided that the delinquent juveniles are placed in separate facilities.

(d) Provide temporary shelter care for children taken into custody under s. 48.19 or 938.19.

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; 1995 a. 77; 1997 a. 27.

48.59 Examination and records. (1) The county department or, in a county having a population of 500,000 or more, the department or an agency under contract with the 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. 48.345 and of every expectant mother of an unborn child placed under its supervision under s. 48.347 and make any physical or mental examinations of the child or expectant mother considered necessary to determine the type of care necessary for the child or expectant mother. The county department, department or agency shall screen a child or expectant mother who is examined under this subsection to determine whether the child or expectant mother is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance. The county department, department or agency shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the child or expectant mother, the results of all tests and examinations given the child or expectant mother and a complete history of all placements of the child while in the legal custody or under the supervision of the county department, department or agency or of the expectant mother while under the supervision of the county department, department or agency.

(2) At the department's request, the county department shall report to the department regarding children who are in the legal custody or under the supervision of the county department and expectant mothers of unborn children who are under the supervision of the county department.

History: 1977 c. 449; 1985 a. 176; 1993 a. 385, 446, 491; 1995 a. 77; 1997 a. 27, 292.

A county with a population under 500,000 may, by ordinance under s. 19.21 (6), provide for the destruction of obsolete case records maintained by county social services agencies. 70 Atty. Gen. 196.

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, meet the requirements specified in s. 48.685 and pay the applicable license fee under s. 48.615 (1) (a) or (b). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(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 or nursing home 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 or continuing any license to a child welfare agency under this section, the department of health and family services shall review the need for the additional placement resources that would be made available by licensing or continuing the license of any child welfare agency after August 5, 1973, providing care authorized under s. 48.61 (3). Neither the department of health and family services nor the department of corrections may 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 a disability" has the meaning given in s. 115.76 (5).

(b) Notwithstanding ss. 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 special education and related services to a child with a disability who has been placed with the child welfare agency under 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 residential care center for children and youth 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; 1995 a. 27 ss. 2582, 9126 (19); 1995 a. 77; 1997 a. 27, 164; 1999 a. 9, 83; 2001 a. 59, 69.

Cross Reference: See also ch. HFS 5, Wis. adm. code.

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; 1999 a. 83.

Cross Reference: See also ch. HFS 54, Wis. adm. code.

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 a residential care center for children and youth operated by the child welfare agency, the child welfare agency must pay to the department a biennial fee of $121, plus a biennial fee of $18.15 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 $254.10

(c) A child welfare agency that wishes to continue a license issued under s. 48.60 (1) shall pay the applicable fee under par. (a) or (b) by the continuation 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 continue a license issued under s. 48.60 (1) and that fails to pay the applicable fee under sub. (1) (a) or (b) by the continuation 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; 1995 a. 27; 1997 a. 27; 2001 a. 59.

SUBCHAPTER XIV

FOSTER HOMES AND TREATMENT FOSTER HOMES

48.619 Definition. In this subchapter, "child" means a person under 18 years of age and also includes, for purposes of counting the number of children for whom a foster home, treatment foster home, or group home may provide care and maintenance, a person 18 years of age or over, but under 19 years of age, who is a full−time student at a secondary school or its vocational or technical equivalent, who is reasonably expected to complete the program

before reaching 19 years of age, who was residing in the foster home, treatment foster home, or group home immediately prior to his or her 18th birthday, and who continues to reside in that foster home, treatment foster home, or group home.

History: 2001 a. 69.

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, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, 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 s. 48.977 or 48.978 or 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 s. 48.977 or 48.978 or 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 or a treatment foster home, the department, county department or child welfare agency shall notify the clerk of the school district in which the foster home or treatment foster home is located that a foster home or treatment 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, 2000, the age−related rates are: $299 for children aged 4 and under; $326 for children aged 5 to 11; $371 for children aged 12 to 14 and $387 for children aged 15 to 17. Beginning on January 1, 2001, the age−related rates are: $302 for children aged 4 and under; $329 for children aged 5 to 11; $375 for children aged 12 to 14; and $391 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; 1995 a. 275; 1997 a. 27, 334; 1999 a. 9; 2001 a. 69.

Cross Reference: See also ch. HFS 56, Wis. adm. code.

A foster child in a family owned foster home under a one−year dispositional order is a resident of the household for insurance purposes. A. G. v. Travelers Insurance Co. 112 Wis. 2d 18, 331 N.W.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 the 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, not including children who under sub. (1m) are not counted toward that number, 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, meet the requirements specified in s. 48.685 and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(1m) The department may issue a license under sub. (1) authorizing a group home solely to provide a safe and structured living arrangement for children 12 years of age or over who are custodial parents, as defined in s. 49.141 (1) (b), or expectant mothers and who are placed in the group home under s. 48.345 (3) (cm) or 938.34 (3) (cm) and for children 14 years of age or over who are custodial parents, as defined in s. 49.141 (1) (b), or expectant mothers and who are placed in the group home under voluntary agreements under s. 48.63 (5), and to provide those children with training in parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote the long−term economic independence of those children and the well−being of the children of those children. In licensing a group home described in this subsection, the department may not count toward the number of children whom the group home is licensed to serve the child of a child who is placed in the group home. The department shall promulgate rules establishing standards for a group home described in this subsection. Those rules shall require such a group home to provide for the health, safety, and welfare of the child of any child custodial parent who has been placed in that group home and to have a policy governing visitation between such a child and the child's noncustodial parent.

(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 $121, plus a biennial fee of $18.15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to continue a license issued under sub. (1) shall pay the fee under this paragraph by the continuation 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 continue a license issued under sub. (1) and that fails to pay the fee under par. (a) by the continuation 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) or to a treatment foster home licensed under s. 48.62 (1) (b).

History: 1977 c. 418; 1985 a. 281; 1991 a. 39; 1993 a. 395, 446; 1995 a. 27; 1997 a. 27; 2001 a. 69.

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, renew or continue 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 home-

owner'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 (3) (cf) and (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 (3) (cf) and (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 (3) (cf) and (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 (3) (cf) and (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 (3) (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 $100 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 (3) (cf) and (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; 1995 a. 27; 1997 a. 27; 2001 a. 16.

Foster parents are not agents of the county for purposes of tort liability. Kara B. v. Dane County, 198 Wis. 2d 24, 542 N.W.2d 777 (Ct. App. 1995), 94−1081.

48.63 Restrictions on placements. (1) Acting under court order or voluntary agreement, the child's parent or guardian or the department of health and family services, the department of corrections, a county department, or a child welfare agency licensed to place children in foster homes, treatment foster homes, or group 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 180 days from the date on which the child was removed from the home under the voluntary agreement.

A group home placement under a voluntary agreement may not exceed 15 days from the date on which the child was removed from the home under the voluntary agreement, except as provided in sub. (5). These time limitations do not apply to placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary agreements may be made only under this subsection and sub. (5) (b) and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent or guardian 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 date on which the child was removed from his or her home under the voluntary agreement. 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 that 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.

(5) (a) Subsection (1) does not apply to the voluntary placement under par. (b) of a child in a group home described in s. 48.625 (1m). Such placements may be made only as provided in par. (b).

(b) If a child who is at least 14 years of age, who is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe and structured living arrangement and the parent or guardian of the child consent, a child welfare agency licensed to place children in group homes may place the child or arrange the placement of the child in a group home described in s. 48.625 (1m). Before placing a child or arranging the placement of a child under this paragraph, the child welfare agency shall report any suspected abuse or neglect of the child as required under s. 48.981 (2). A voluntary agreement to place a child in a group home described in s. 48.625 (1m) may be made only under this paragraph, shall be in writing, and shall specifically state that the agreement may be terminated at any time by the parent, guardian, or child. An initial placement under this paragraph may not exceed 180 days from the date on which the child was removed from the home under the voluntary agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement under this paragraph of a child who is under 16 years of age on the date of the initial placement may be extended as provided in par. (d) 3. to 6. no more than once.

(c) A permanency plan under s. 48.38 is required for each child placed in a group home under par. (b) and for any child of that child who is residing with that child. The agency that placed the child or that arranged the placement of the child shall prepare the plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement and shall provide a copy of the plan to the child and the child's parent or guardian.

(d) 1. In this paragraph, "independent reviewing agency" means a person contracted with under subd. 2. to review permanency plans and placements under subds. 3. to 6.

2. An agency that places children under par. (b) or that arranges those placements shall contract with another agency licensed under s. 48.61 (3) to place children or with a county department to review the permanency plans and placements of those children and of any children of those children who are residing with those children as provided in subds. 3. to 6.

3. If the agency that has placed a child under par. (b) or that has arranged the placement of the child wishes to extend the placement of the child, the agency shall prepare a revised permanency plan for that child and for any child of that child who is residing with that child and submit the revised permanency plan or plans, together with a request for a review of the revised permanency plan or plans and the child's placement, to the independent reviewing agency before the expiration of the child's placement. The request shall include a statement that an extension of the child's placement would be in the best interests of the child, together with reliable and credible information in support of that statement, a statement that the child and the parent or guardian of the child consent to the extension of the child's placement, and a request that the independent reviewing agency approve an extension of the child's placement. On receipt of a revised permanency plan or plans and a request for review, the independent reviewing agency shall set a time and place for the review and shall advise the agency that placed the child or that arranged the placement of the child of the time and place of the review.

4. Not less than 10 days before the review, the agency that placed the child or that arranged the placement of the child shall provide a copy of the revised permanency plan or plans and the request for review submitted under subd. 3. and notice of the time and place of the review to the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child is placed, together with notice of the issues to be determined as part of the permanency plan review and notice of the fact that those persons may have the opportunity to be heard at the review by submitting written comments to that agency or the independent reviewing agency before the review or by participating at the review.

5. At the review, any person specified in subd. 4. may present information relevant to the issue of extension and information relevant to the determinations specified in s. 48.38 (5) (c). After receiving that information, the independent reviewing agency shall make the determinations specified in s. 48.38 (5) (c) and determine whether an extension of the child's placement is in the best interests of the child and whether the child and the parent or guardian of the child consent to the extension. If the independent reviewing agency determines that the extension is in the best interests of the child and that the child and the parent or guardian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent or guardian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval, and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent or guardian of the child may terminate the placement at any time during the extension period.

6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38 (5) (c) that were

made under subd. 5. and shall provide a copy of that summary to the independent reviewing agency, the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child was placed.

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; 1995 a. 27 ss. 2594, 9126 (19); 1995 a. 77; 2001 a. 69, 109.

48.64 Placement of children in foster homes, treatment foster homes and group homes. (1) DEFINITION. In this section, "agency" means the department of health and family services, the department of corrections, a county department or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes.

(1m) FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME AGREEMENTS. If an agency places a child in a foster home, treatment foster home or group 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 may 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 or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the proposed removal. 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, a treatment foster home or a group home, the agency shall notify the clerk of the school district in which the foster home, treatment foster home or group home is located that a school−age child has been placed in a foster home, treatment 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; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69.

Cross Reference: See also ch. HFS 57, Wis. adm. code.

Foster parents' rights were violated by the department's failure to give mandatory written notice under sub. (1), [now (1m)] but, since adoptive placement was found to be in the children's best interest, the foster parents' rights were subordinated to the paramount interest of the children. In matter of Z. 81 Wis. 2d 194, 260 N.W.2d 246 (1977).

A foster parent is entitled to a hearing under sub. (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. Bingenheimer v. DHSS, 129 Wis. 2d 100, 383 N.W.2d 898 (1986).

Sub. (4) (a) requires a hearing when an adoption agency removes a child from an adoptive placement within 6 months. Thelen v. DHSS, 143 Wis. 2d 574, 422 N.W.2d 146 (Ct. App. 1988).

Foster children have a constitutional right under the due process clause to safe and secure placement in a foster home. Whether a public official violated that right will be determined based on a professional judgment standard. Kara B. v. Dane County, 205 Wis. 2d 140, 555 N.W.2d 630 (1996), 94−1081. See also Estate of Cooper v. Milwaukee County, 103 F. Supp. 2d 1124 (2000)

The best interest of the child standard under sub. (4) (c) must be read in conjunction with the children's code directive that a child's best interest is generally served by being reunited with his or her family. Sallie T. v. Milwaukee County DHSS, 212 Wis. 2d 694, 570 N.W.2d 46 (Ct. App. 1997).

Sallie T. does not require that the trial court be blind to events preceding the most recent dispositional order. Constitutional protections of a parent's right to his or her child do not prevent the application of the best interests of the child standard as the central focus of determining where the child shall live. "Best interests" and "safety" are not synonymous. Richard D. v. Rebecca G. 228 Wis. 2d 658, 599 N.W.2d 90 (Ct. App. 1999).

While prospective adoptive parents have a limited protected liberty interest in the family unit during the first 6 months of placement, that interest does not require a 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, meet the requirements specified in s. 48.685 and pay the license fee

under sub. (3). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(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 $60.50. 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 $30.25, plus a biennial fee of $8.47 per child, based on the number of children that the day care center is licensed to serve. A day care center that wishes to continue a license issued under sub. (1) shall pay the applicable fee under this paragraph by the continuation 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 continue a license issued under par. (a) and that fails to pay the applicable fee under par. (a) by the continuation 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; 1995 a. 27, 289; 1997 a. 27, 35.

Cross Reference: See also chs. HFS 45, 46, and 55, Wis. adm. code.

The distinction created by sub. (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. (1) Each county department shall certify, according to the standards adopted by the department of workforce development under s. 49.155 (1d), each day care provider reimbursed for child care services provided to families determined eligible under s. 49.155, unless the provider is a day care center licensed under s. 48.65 or is established or contracted for under s. 120.13 (14). Each county may charge a fee to cover the costs of certification. To be certified under this section, a person must meet the minimum requirements for certification established by the department of workforce development under s. 49.155 (1d), meet the requirements specified in s. 48.685 and pay the fee specified in this section. The county shall certify the following categories of day care providers:

(a) Level I certified family day care providers, as established by the department of workforce development under s. 49.155 (1d). No county may certify a provider under this paragraph if the provider is a relative of all of the children for whom he or she provides care.

(b) Level II certified family day care providers, as established by the department of workforce development, under s. 49.155 (1d).

(2m) Each county department shall provide the department with information about each person who is denied certification for a reason specified in s. 48.685 (4m) (a) 1. to 5.

History: 1983 a. 193; 1985 a. 176; 1995 a. 289, 404; 1997 a. 27, 35, 252; 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. DWD 55, Wis. adm. code.

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 contracted 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 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; 1997 a. 256.

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 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 employee 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 employee 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; 1997 a. 256.

SUBCHAPTER XVI

LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, TREATMENT FOSTER HOMES, GROUP HOMES, DAY CARE CENTERS AND COUNTY DEPARTMENTS

48.66 Licensing duties of the department. (1) (a) Except as provided in s. 48.715 (6) and (7), 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. 938.22, 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.

(b) Except as provided in s. 48.715 (6), the department of corrections may license a child welfare agency to operate a secured child caring institution, as defined in s. 938.02 (15g), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34 (4d), (4h) or (4m) and referred to the child welfare agency by the court or the department of corrections and to provide supervision, care and maintenance for those juveniles. The department of corrections may also license not more than 5 county departments, as defined in s. 938.02 (2g), or not more than 5 consortia of county departments to operate not more than 5 group homes that have been licensed under par. (a) as secured group homes, as defined in s. 938.02 (15p), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34 (4m) and referred to the county department by the court and to provide supervision, care and maintenance for those juveniles.

(c) A license issued under par. (a) or (b), other than a license to operate a foster home, treatment foster home, secured child caring institution or secured group home, is valid until revoked or suspended. A license issued under this subsection to operate a foster home, treatment foster home, secured child caring institution or secured group home may be for any term not to exceed 2 years from the date of issuance. No license issued under par. (a) or (b) is transferable.

(2) The department shall prescribe application forms to be used by all applicants for licenses from it. The application forms prescribed by the department shall require that the social security numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are individuals, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under sub. (2m) (a) 2., be provided and that the federal employer identification numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are not individuals be provided.

(2m) (a) 1. Except as provided in subd. 2., the department of health and family services shall require each applicant for a license under sub. (1) (a) to operate a child welfare agency, group home, shelter care facility or day care center who is an individual to provide that department with the applicant's social security number, and shall require each applicant for a license under sub. (1) (a) to operate a child welfare agency, group home, shelter care facility or day care center who is not an individual to provide that department with the applicant's federal employer identification number, when initially applying for or applying to continue the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department of health and family services that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

(am) 1. Except as provided in subd. 2., the department of corrections shall require each applicant for a license under sub. (1) (b) to operate a secured child caring institution who is an individual to provide that department with the applicant's social security number when initially applying for or applying to renew the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department of corrections that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

(b) If an applicant who is an individual fails to provide the applicant's social security number to the department of health and family services or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to that department, that department may not issue or continue a license under sub. (1) (a) to operate a child welfare agency, group home, shelter care facility or day care center to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (a) 2.

(bm) If an applicant who is an individual fails to provide the applicant's social security number to the department of corrections, that department may not issue or renew a license under sub. (1) (b) to operate a secured child caring institution to or for the applicant unless the applicant does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (am) 2.

(c) The department of health and family services may not disclose any information obtained under par. (a) 1. to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the department of workforce development under s. 49.22 (2m).

(cm) The department of corrections may not disclose any information obtained under par. (am) 1. to any person except on the request of the department of workforce development under s. 49.22 (2m).

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

(5) A child welfare agency, group home, day care center or shelter care facility license, other than a probationary license, is valid until revoked or suspended, but shall be reviewed every 2 years after the date of issuance as provided in this subsection. At least 30 days prior to the continuation date of the license, the licensee shall submit to the department an application for continuance of the license in the form and containing the information that the department requires. If the minimum requirements for a license established under s. 48.67 are met, the application is approved, the applicable fees referred to in ss. 48.68 (1) and 48.685 (8) are paid and any forfeiture under s. 48.715 (3) (a) or penalty under s. 48.76 that is due is paid, the department shall continue the license for an additional 2−year period, unless sooner suspended or revoked. If the application is not timely filed, the department shall issue a warning to the licensee. If the licensee fails to apply for continuance of the license within 30 days after

receipt of the warning, the department may revoke the license as provided in s. 48.715 (4) and (4m) (b).

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; 1995 a. 27, 77, 352; 1997 a. 27, 191, 205, 237; 1999 a. 9.

Cross Reference: See also ch. HFS 38, Wis. adm. code.

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 commerce and the department of public instruction before promulgating these rules. In establishing the minimum requirements for the issuance of licenses to day care centers that provide care and supervision for children under one year of age, the department shall include a requirement that all licensees who are individuals and all employees and volunteers of a licensee who provide care and supervision for children receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome.

History: 1975 c. 307; 1977 c. 29, 205, 271, 418, 447; 1979 c. 300; 1985 a. 176; 1993 a. 375, 446; 1995 a. 27 ss. 2599, 9116 (4), 9145 (1); 1997 a. 27; 2001 a. 16.

Cross Reference: See also chs. HFS 45 and 46, Wis. adm. code.

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 appropriation under s. 20.435 (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; 1997 a. 35.

Cross Reference: See also ch. HFS 38, 45, 46, 52, 54, 55, 56, and 57, Wis. adm. code.

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 and meets the requirements specified in s. 48.685, if applicable. In determining whether to issue or continue a license, the department may consider any action by the applicant, or by an employee of the applicant, that constitutes a substantial failure by the applicant or employee 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), 48.65 (3) (a) or 938.22 (7) (b), the department shall issue a license under s. 48.66 (1) (a) or, if applicable, a probationary license under s. 48.69 or, if applicable, shall continue a license under s. 48.66 (5). 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. 48.62 (4), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

(2) Before continuing the license of any child welfare agency to operate a residential care center for children and youth or of any group home, the department shall consider all formal complaints filed under s. 48.745 (2) and the disposition of each during the previous 2−year period.

(3) Within 10 working days after receipt of an application for initial licensure of a child welfare agency to operate a residential care center for children and youth or of a 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 that may affect the health and safety of the residents of the residential care center for children and youth or group home. No license may be issued to a child welfare agency to operate a residential care center for children and youth or to a 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 care center for children and youth 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 care center for children and youth 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 care center for children and youth 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 care center for children and youth 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; 1995 a. 27, 77; 1997 a. 27; 1999 a. 9; 2001 a. 59.

Cross Reference: See also ch. HFS 56, Wis. adm. code.

48.685 Criminal history and child abuse record search. (1) In this section:

(ag) 1. "Caregiver" means any of the following:

a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of the entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.

b. A person who has, or is seeking, a license, certification or contract to operate an entity.

2. "Caregiver" does not include a person who is certified as an emergency medical technician under s. 146.50 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first responder under s. 146.50 if the person is employed, or seeking employment, as a first responder.

(am) "Client" means a child who receives direct care or treatment services from an entity.

(ar) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(av) "Direct contact" means face−to−face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes; a foster home or treatment foster home that is licensed under s. 48.62; a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a day care provider that is certified under s. 48.651; or a temporary employment agency that provides caregivers to another entity.

(bg) "Foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(bm) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(br) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho−Chunk Nation.

(c) "Serious crime" means a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.19 (3), 1999 stats., or a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 if committed in this state.

(d) "Treatment foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(e) "Tribe" means a federally recognized American Indian tribe or band in this state.

(2) (am) The department, a county department, a child welfare agency or a school board shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b., a nonclient resident of an entity and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651:

1. A criminal history search from the records maintained by the department of justice.

2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

3. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

5. Information maintained by the department under this section and under ss. 48.651 (2m), 48.75 (1m) and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subdivision, the department, a county department, a child welfare agency or a school board need not obtain the information specified in subds. 1. to 4.

(b) 1. Every entity shall obtain all of the following with respect to a caregiver of the entity:

a. A criminal history search from the records maintained by the department of justice.

b. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

e. Information maintained by the department under this section and under ss. 48.651 (2m), 48.75 (1m) and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

4. Subdivision 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age, who is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651 and with respect to whom the department, a county department or a school board is required under par. (am) (intro.) to obtain the information specified in par. (am) 1. to 5.

(bb) If information obtained under par. (am) or (b) 1. indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) 1. does not indicate such a charge or conviction, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b) 1., a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, school board or entity shall

make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(bd) Notwithstanding pars. (am) and (b) 1., the department, a county department, a child welfare agency or a school board is not required to obtain the information specified in par. (am) 1. to 5., and an entity is not required to obtain the information specified in par. (b) 1. a. to e., with respect to a person under 18 years of age whose background information form under sub. (6) (am) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department, county department, child welfare agency, school board or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department, a county department, a child welfare agency or a school board from obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(bg) If an entity employs or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b) 1. a. to c. and e. has already been obtained by another entity, the entity may obtain that information from that other entity, which shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b) 1. a. to c. and e. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b) 1. a. to c. and e.

(bm) If the person who is the subject of the search under par. (am) or (b) 1. is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department, county department, child welfare agency, school board or entity determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the department, county department, child welfare agency, school board or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1. a. The department, county department, child welfare agency, school board or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

(d) Every entity shall maintain, or shall contract with another person to maintain, the most recent background information obtained on a caregiver under par. (b). The information shall be made available for inspection by authorized persons, as defined by the department by rule.

(3) (a) Every 4 years or at any time within that period that the department, a county department, a child welfare agency or a school board considers appropriate, the department, county department, child welfare agency or school board shall request the information specified in sub. (2) (am) 1. to 5. for all persons who are licensed, certified or contracted to operate an entity, for all persons who are nonclient residents of an entity and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (4) or of a day care provider that is certified under s. 48.651.

(b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. a. to e. for all persons who are caregivers of the entity other than persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651.

(3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a county department, a child welfare agency or a school board has obtained the information required under sub. (2) (am) or (3) (a) with respect to a person who is a caregiver specified in sub. (1) (ag) 1. b. and that person is also an employee, contractor or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

(4) An entity that violates sub. (2), (3) or (4m) (b) may be required to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(4m) (a) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (5), the department may not license, or continue or renew the license of, a person to operate an entity, a county department may not certify a day care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home or treatment foster home under s. 48.62 and a school board may not contract with a person under s. 120.13 (14), if the department, county department, child welfare agency or school board knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification or if the person is proposing to contract with a school board under s. 120.13 (14) or to renew a contract under that subsection, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(ad) The department, a county department or a child welfare agency may license a foster home or treatment foster home under s. 48.62, a county department may certify a day care provider under s. 48.651 and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) indicating that the person is not ineligible to be licensed, certified or contracted with for a reason specified in par. (a) 1. to 5.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the entity knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the

person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(c) If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2) (am) 1. to 5. or (b) 1. If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information sought under sub. (2) (am). An entity shall provide supervision for a person who is employed, contracted with or permitted to reside as permitted under this paragraph.

(5) (a) The department may license to operate an entity, a county department may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62 and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department, the child welfare agency or the school board or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

(bm) For purposes of licensing a foster home or treatment foster home, no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

1. An offense under ch. 948 that is a felony.

2. A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5) or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person.

3. A violation of s. 943.23 (1m) or (1r), 1999 stats., or of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2) or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), 943.23 (1g) or 943.32 (2).

4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (e) or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2) (am).

(5c) (a) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the department or a child welfare agency that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(b) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the county department that he or she has been rehabilitated may appeal to the director of the county department or his or her designee. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to appeal the decision under ch. 68.

(c) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the school board that he or she has been rehabilitated may appeal to the state superintendent of public instruction or his or her designee. Any person who is adversely affected by a decision of the state superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(5d) (a) Any tribe that chooses to conduct rehabilitation reviews under sub. (5) shall submit to the department a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

3m. The title of the person or body, designated by the tribe, to whom a person may appeal an adverse decision made by the person specified under subd. 3. and whether the tribe provides any further rights to appeal.

4. The manner in which the tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).

5. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

(b) If, within 90 days after receiving the plan, the department does not disapprove the plan, the plan shall be considered approved. If, within 90 days after receiving the plan, the department disapproves the plan, the department shall provide notice of that disapproval to the tribe in writing, together with the reasons for the disapproval. The department may not disapprove a plan unless the department finds that the plan is not rationally related to the protection of clients. If the department disapproves the plan, the tribe may, within 30 days after receiving notice of the disapproval, request that the secretary review the department's decision. A final decision under this paragraph is not subject to further review under ch. 227.

(5g) Beginning on January 1 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172 (2) that specifies the number of persons in the previous year who have requested to demonstrate that they have been rehabilitated under sub. (5) (a), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5) (a) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

(5m) Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, a county department or a child welfare agency may refuse to license a foster home or treatment foster home under s. 48.62, and an entity may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the person has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department, county department, child welfare agency or entity, substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a day care center, a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14), a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) and a day care provider that is certified under s. 48.651 may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the day care center or day care provider if the person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, but that is, in the estimation of the department, county department, school board, day care center or day care provider, substantially related to the care of a client.

(6) (a) The department shall require any person who applies for issuance, continuation or renewal of a license to operate an entity, a county department shall require any day care provider

who applies for initial certification under s. 48.651 or for renewal of that certification, a county department or a child welfare agency shall require any person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under s. 48.62 and a school board shall require any person who proposes to contract with the school board under s. 120.13 (14) or to renew a contract under that subsection, to complete a background information form that is provided by the department.

(am) Every 4 years an entity shall require all of its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department.

(b) 1. For caregivers who are licensed by the department, for persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, for persons who are nonclient residents of an entity that is licensed by the department, and for other persons specified by the department by rule, the entity shall send the background information form to the department.

2. For caregivers who are licensed or certified by a county department, for persons who are nonclient residents of an entity that is licensed or certified by a county department and for other persons specified by the department by rule, the entity shall send the background information form to the county department.

3. For caregivers who are licensed by a child welfare agency, for persons who are nonclient residents of an entity that is licensed by a child welfare agency and for other persons specified by the department by rule, the entity shall send the background information form to the child welfare agency.

4. For caregivers who are contracted with by a school board, for persons who are nonclient residents of an entity that is contracted with by a school board and for other persons specified by the department by rule, the entity shall send the background information form to the school board.

(c) A person who provides false information on a background information form required under this subsection may be required to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(7) The department shall do all of the following:

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

(d) Provide a background information form that requires the person completing the form to include his or her date of birth on the form.

(8) The department, a county department, a child welfare agency or a school board may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a) or for providing information to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be inconsistent with federal law.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321.

Cross Reference: See also ch. HFS 12, Wis. adm. code.

48.69 Probationary licenses. Except as provided under s. 48.715 (6) and (7), 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) (a) 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, except as provided under s. 48.715 (6) and (7), 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). 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; 1997 a. 191, 237; 1999 a. 9.

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) (a) 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) (a) 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) (a) 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 employee.

(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 violates a provision of licensure under s.

48.70 (1) or rule promulgated by the department under s. 48.67 or 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 $1,000. 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. 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 secretary of administration 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 continue 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) (a) 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.

(e) The licensee has failed to apply for a continuance of the license within 30 days after receipt of the warning under s. 48.66 (5).

(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), (c) or (e), 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) (a) or a probationary license under s. 48.69 to any person who has had a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 revoked within the previous 5 years.

(6) The department of health and family services shall deny, suspend, restrict, refuse to renew or otherwise withhold a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 to operate a child welfare agency, group home, shelter care facility or day care center, and the department of corrections shall deny, suspend, restrict, refuse to renew or otherwise withhold a license under s. 48.66 (1) (b) to operate a secured child caring institution, for failure of the applicant or licensee to pay court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for failure of the applicant or licensee to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 48.72, an action taken under this subsection is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in s. 48.72.

(7) The department shall deny an application for the issuance or continuation of a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 to operate a child welfare agency, group home, shelter care facility or day care center, or revoke such a license already issued, if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. An action taken under this subsection is subject to review only as provided under s. 73.0301 (5) and not as provided in s. 48.72.

History: 1991 a. 275; 1993 a. 375; 1995 a. 27; 1997 a. 27, 191, 237; 1999 a. 9, 32, 186; 2003 a. 33.

48.72 Appeal procedure. Except as provided in s. 48.715 (6) and (7), any person aggrieved by the department's refusal or failure to issue, renew or continue 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, renew or continue 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; 1997 a. 27, 191, 237.

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 day care center licensee, may suspend, revoke or refuse to continue a day care center 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; 1997 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 or continue 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; 1997 a. 27.

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 operating a residential care center for children and youth or by a 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 residential care center for children and youth or group home and shall not be subject to reprisals for doing so. All formal complaints regarding residential care centers for children and youth 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 that licenses residential care centers for children and youth 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 residential care center for children and youth 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; 2001 a. 59.

48.75 Foster homes and treatment foster homes licensed by public licensing agencies and by child welfare agencies. (1b) In this section, "public licensing agency" means a county department or, in a county having a population of 500,000 or more, the department.

(1d) Child welfare agencies, if licensed to do so by the department, and public licensing agencies 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 public licensing agency 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 public licensing agency may license a foster home only if the foster home is located in the county of the public licensing agency, except that a public licensing agency 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 public licensing agency 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 public licensing agency issuing the license and the county in which the foster home is located are contiguous.

4. The county of the public licensing agency issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833, 48.835 or 48.837.

5. The public licensing agency of the county in which the prospective foster home is located requests the public licensing agency of another county to license the foster home.

(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 par. (a) 1., 2. or 3. unless the public licensing agency issuing the license has notified the public licensing agency of the county in which the foster home will be located of its intent to issue the license and the 2 public licensing agencies have entered into a written agreement under this paragraph. A public licensing agency is not required to enter into any agreement under this paragraph allowing the public licensing agency 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 public licensing agency 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 public licensing agency 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 public licensing agency issuing a license under par. (a) 1., 2. or 3. violates the agreement under par. (c), the public licensing agency 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 public licensing agency that issued the license to remove the child from the foster home within 30 days after receipt, by the public licensing agency that issued the license, of notification of the termination of the agreement.

(1m) Each child welfare agency and public licensing agency shall provide the subunit of the department that administers s.

48.685 with information about each person who is denied a license for a reason specified in s. 48.685 (4m) (a) 1. to 5.

(1r) At the time of initial licensure and license renewal, the child welfare agency or public licensing agency issuing a license under sub. (1d) or (1g) shall provide the licensee with written information relating to the age−related monthly foster care rates and supplemental payments specified in s. 48.62 (4), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

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

History: 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 336; 1993 a. 395, 446; 1995 a. 225; 1997 a. 27, 237; 1999 a. 9, 103.

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 Wis. 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, or a licensed day care center.

(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 s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.432, 48.433, 48.93, 48.981 (7), 938.51, or 938.78 or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian, or child, unless the agency determines that inspection of the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

(aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem, unless the agency determines that inspection of the record by the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(ap) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child by the unborn child's guardian ad litem, specifically identify the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125 and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125.

(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 of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., 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 or on extended supervision under s. 302.113 or 302.114.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the

investigation or proceeding for which that information was obtained.

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; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292; 2001 a. 38, 69, 104, 109.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) (a) and 938.396 (2) (a); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03−3018.

SUBCHAPTER XVIII

COMMUNITY SERVICES

48.79 Powers of the department. The department has authority and power:

(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.

History: 1989 a. 31, 107; 1995 a. 27, 77.

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 child who is present in this state at the time the petition for adoption is filed may be adopted if any of the following criteria are met:

(1) Both of the child's parents are deceased.

(2) The parental rights of both of the child's parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(3) The parental rights of one of the child's parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction and the child's other parent is deceased.

(4) The person filing the petition for adoption is the spouse of the child's parent with whom the child and the child's parent reside and either of the following applies:

(a) The child's other parent is deceased.

(b) The parental rights of the child's other parent with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(5) Section 48.839 (3) (b) applies.

(6) The child is being readopted under s. 48.97.

History: 1987 a. 383; 1989 a. 161; 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

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 Wis. 2d 424, 501 N.W.2d 908 (Ct. App. 1993).

48.825 Advertising related to adoption. (1) In this section:

(a) "Advertise" means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television.

(b) "Another jurisdiction" means a state of the United States other than Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States or a federally recognized American Indian tribe or band.

(2) Except as provided in sub. (3), no person may do any of the following:

(a) Advertise for the purpose of finding a child to adopt.

(b) Advertise that the person will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child.

(c) Advertise that the person will place a child for adoption.

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

(a) The department, a county department or a child welfare agency licensed under s. 48.60 to place children for adoption.

(b) An individual or agency providing adoption information under s. 48.55.

(d) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department, a county department or a child welfare agency licensed under s. 48.60 or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes.

(e) An individual seeking to place his or her child for adoption.

(4) Nothing in this section prohibits an attorney licensed to practice in this state from advertising his or her availability to practice or provide services relating to the adoption of children.

(5) Any person who violates sub. (2) may be fined not more than $10,000 or imprisoned not more than 9 months or both.

History: 1997 a. 104; 1999 a. 9.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

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 for adoptability finding. (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. Except as provided in ss. 48.977 and 48.978, ch. 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 (1).

(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 or, in a county having a population of 500,000 or more, the department or an agency under contract with the 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; 1995 a. 73, 275; 1997 a. 27, 334.

48.832 Transfer of guardianship upon revocation of guardian's license or contract. If the department revokes the license of a county department licensed under s. 48.57 (1) (hm) to accept guardianship, or of a child welfare agency licensed under s. 48.61 (5) to accept guardianship, or if the department terminates the contract of a county department licensed under s. 48.57 (1) (e) 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; 1997 a. 27.

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. Before placing a child for adoption under this section, the department, county department or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department or child welfare agency. 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; 1995 a. 275.

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 of the child 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; 1997 a. 104.

Concurrent TPR/adoption proceedings under s. 48.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W.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 Wis. 2d 424, 501 N.W.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.

(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.

(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) Shall hold a hearing within 30 days after the date of filing of the petitions, 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 under s. 48.57 (1) (e) or (hm) 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 acknowledged under s. 767.62 (1) or a substantially similar law of another state or 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 acknowledged or 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 the report that is submitted under s. 48.913 (6). The court shall determine whether any payments or the conditions specified in any agreement to make payments are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child 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 dismiss the petitions under subs. (2) and (3) or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1).

(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; 1997 a. 27, 104, 191.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

Cross Reference: See also s. HFS 1.01, Wis. adm. code.

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 Wis. 2d 114, 507 N.W.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 the department, in a county having a population of 500,000 or more, to a county department or to 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; 1997 a. 27.

Cross Reference: See also s. HFS 1.01, Wis. adm. code.

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 the department, in a county having a population of 500,000 or more, or a county department or, with the consent of the department in a county having a population of less than 500,000 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 department in a county having a population of 500,000 or more or the county department to conduct an investigation as described under par. (a) (intro.) or may order the department in a county having a population of less than 500,000 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; 1997 a. 27.

48.89 Recommendation of the department. (1) The recommendation of the department is required for the adoption of a child 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, if a report of an investigation by the department, a county department under s. 48.57 (1) (e) or (hm)

or a licensed child welfare agency is required by s. 48.88 (2) (a) 2. or if one of the petitioners is a relative of the child.

History: 1973 c. 263; 1977 c. 271; 1981 c. 81; 1983 a. 447; 1985 a. 176; 1995 a. 443.

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 or by adoption, 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; 1997 a. 104.

Once administrative proceedings have commenced under s. 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 Wis. 2d 190, 222 N.W.2d 139 (1974).

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 Wis. 2d 424, 501 N.W.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 acknowledged under s. 767.62 (1) or a substantially similar law of another state or 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. 48.841 or 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; 1995 a. 443; 1997 a. 191.

Meaning of "best interests of the child" is discussed. Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865.

48.913 Payments by adoptive or proposed adoptive parents to a birth parent or child or on behalf of a birth parent or child. (1) PAYMENTS ALLOWED. The proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, may pay the actual cost of any of the following:

(a) Preadoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

(b) Post−adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

(c) Maternity clothes for the child's birth mother, not to exceed a reasonable amount.

(d) Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.

(e) Services provided by a licensed child welfare agency in connection with the adoption.

(f) Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child. Medical and hospital care does not include lost wages or living expenses.

(g) Medical and hospital care received by the child.

(h) Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.

(i) Living expenses of the child's birth mother, in an amount not to exceed $1,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

(j) Any investigation ordered under s. 48.837 (4) (c), according to a fee schedule established by the department based on ability to pay.

(k) If the adoption is completed, the cost of any care provided for the child under s. 48.837 (4) (d).

(L) Birthing classes.

(m) A gift to the child's birth mother from the proposed adoptive parents, of no greater than $50 in value.

(2) PAYMENT OF EXPENSES WHEN BIRTH PARENT IS RESIDING IN ANOTHER STATE. Notwithstanding sub. (1), the proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents of a child may pay for an expense of a birth parent of the child or an alleged or presumed father of the child if the birth parent or the alleged or presumed father was residing in another state when the payment was made and when the expense was incurred and if all of the following apply:

(a) The child was placed for adoption in this state in accordance with s. 48.988.

(b) The state in which the birth parent or the alleged or presumed father was residing when the payment was made permits the payment of that expense by the proposed adoptive parents of the child.

(c) A listing of all payments made under this subsection, a copy of the statutory provisions of the state in which the birth parent or the alleged or presumed father was residing when the payments were made that permit those payments to be made by the proposed adoptive parents of the child and a copy of all orders entered in the state in which the birth parent or the alleged or presumed father was residing when the payments were made that relate to the payment of expenses of the birth parent or the alleged or presumed father by the proposed adoptive parents of the child is submitted to the court as follows:

1. With the report under sub. (6), if the parental rights of either birth parent of the child are terminated in this state.

2. With a petition under s. 48.837 (2), if the parental rights of both birth parents of the child are terminated in another state and the child is placed for adoption under s. 48.837 (2).

3. With a petition under s. 48.90, if the parental rights of both parents of the child are terminated in another state and the child is placed for adoption under s. 48.833.

(3) METHOD OF PAYMENT. Any payment under sub. (1) or (2) shall be made directly to the provider of a good or service except that a payment under sub. (1) or (2) may be made to a birth parent of the child or to an alleged or presumed father of the child as reimbursement of an amount previously paid by the birth parent or by the alleged or presumed father if documentation is provided showing that the birth parent or alleged or presumed father has made the previous payment.

(4) OTHER PAYMENTS PROHIBITED. The proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may not make any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child except as provided in subs. (1) and (2).

(5) PAYMENTS AFTER FINALIZATION OF ADOPTION. The adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may make a payment that is authorized under subs. (1) and (2) after finalization of the adoption, if the payment is included in the report under sub. (6) or an amendment to that report filed with the court.

(6) REPORT TO THE COURT; WHEN REQUIRED. A report containing the information specified in sub. (7) shall be provided to the court at the time of the hearing on the petition for adoptive placement under s. 48.837 (2) or upon the order of the court under s. 48.422 (7) (bm).

(7) REPORT TO THE COURT; CONTENTS REQUIRED. The report required under sub. (6) shall include a list of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or by a person acting on their behalf to a birth parent of the child, an alleged or presumed father of the child or the child, on behalf of a birth parent of the child, an alleged or presumed father of the child or the child, or to any other person in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents. The report shall be itemized and shall show the goods or services for which payment was made or agreed to be made. The report shall include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any payment from the proposed adoptive parents or a person acting on behalf of the proposed adoptive parents in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

(8) ADOPTION OF FOREIGN CHILDREN AND ADOPTION BY RELATIVES OF THE CHILD. This section does not apply to an adoptive or proposed adoptive parent of a child with whom the child has been placed under s. 48.839 or to an adoptive or proposed adoptive parent of a child who is a relative of the child.

History: 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

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 adopted 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 ss. 854.20 and 854.21.

(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; 1997 a. 35, 188.

A valid adoption of the 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 Wis. 2d 473, 228 N.W.2d 681 (1975).

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. In re Marriage of Soergel, 154 Wis. 2d 564, 453 N.W.2d 624 (1990).

Adoption of the child of a deceased parent does not terminate the decedent's parents' grandparental visitation rights under s. 880.115. Grandparental Visitation of C.G.F., 168 Wis. 2d 62, 483 N.W.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 Wis. 2d 492, 516 N.W.2d 678 (1994).

Adoption proceedings confer all parental rights on the adoptive parents and therefore resolve all issues relating to the biological grandparents' rights to assert claims for custody and guardianship. Following adoption, a change requires a showing of unfitness in the adoptive parents. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

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, subject to subs. (1m) and (2), 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.

(1m) (a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a relative who has maintained a relationship similar to a parent−child relationship with a child if the relative has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(am) Except as provided in par. (b), if a relative who is granted visitation rights with a child under sub. (1) is convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the relative from having visitation with the child on petition of the child or the parent, guardian or legal custodian of the child, or on the court's own motion, and on notice to the relative.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(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; 1999 a. 9.

Grandparents' Visitation Rights Following Adoption: Expanding Traditional Boundaries in Wisconsin. 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, 48.434, 48.48 (17) (a) 9. 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; 1997 a. 27, 104, 252.

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.

Fundamental Rights Debate: Should Wisconsin Allow Adult Adoptees Unconditional Access to Adoption Records and Original Birth Certificates? Racine. 2002 WLR 1437.

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 and ch. 938 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; 1995 a. 77.

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.

History: 1971 c. 187; 1981 c. 81; 1995 a. 443.

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 for a child with special needs and only when the department 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.* 1. Except as provided in subd. 3., for support of a child who was in foster care or treatment foster care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the amount of that child's foster care or treatment foster care payment at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

2. Except as provided in subd. 3., for support of a child not in foster care or treatment foster care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the uniform foster care rate in effect at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

3. For support of a child who is defined under rules promulgated by the department under sub. (5) (b) as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty−of−care problems, the initial amount of adoption assistance for maintenance shall be $0.

4. The amount of adoption assistance for maintenance may be changed under an amended agreement under sub. (4) (b) or (c). If an agreement is amended under sub. (4) (b) or (c), the amount of adoption assistance for maintenance shall be the amount specified in the amended agreement but may not exceed the uniform foster care rate that would be applicable to the child if the child were in foster care during the time for which the adoption assistance for maintenance is paid.

(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.

(3m) DURATION. The adoption assistance may be continued after the adoptee reaches the age of 18 if that adoptee is a full−time high school student.

(4) PROCEDURE. (a) Except in extenuating circumstances, as defined by the department by rule promulgated under sub. (5) (a), a written agreement to provide adoption assistance shall be made prior to adoption. An agreement to provide adoption assistance may be made only for a child who, at the time of placement for adoption, is in the guardianship of the department or other agency authorized to place children for adoption or in the guardianship of an American Indian tribal agency in this state.

(b) If an agreement to provide adoption assistance is in effect and if the adoptive or proposed adoptive parents of the child who is the subject of the agreement believe there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c), the adoptive or proposed adoptive

parents may request that the agreement be amended to increase the amount of adoption assistance for maintenance. If a request is received under this paragraph, the department shall do all of the following:

1. Determine whether there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c) and whether there has been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

2. If there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, offer to increase the amount of adoption assistance for maintenance based on criteria established by the department by rule promulgated under sub. (5) (d).

3. If an increased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, amend the agreement in writing to specify the increased amount of adoption assistance for maintenance.

(bm) Annually, the department shall review an agreement that has been amended under par. (b) to determine whether the substantial change in circumstances that was the basis for amending the agreement continues to exist. If that substantial change in circumstances continues to exist, the agreement, as amended, shall remain in effect. If that substantial change in circumstances no longer exists, the department shall offer to decrease the amount of adoption assistance for maintenance based on criteria established by the department under sub. (5) (dm). If the decreased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the department shall amend the agreement in writing to specify the decreased amount of adoption assistance for maintenance. If the decreased amount of adoption assistance for maintenance is not agreed to by the adoptive or proposed adoptive parents, the adoptive or proposed adoptive parents may appeal the decision of the department regarding the decrease under the procedure established by the department under sub. (5) (dm).

(c) The department may propose to the adoptive or proposed adoptive parents that an agreement to provide adoption assistance be amended to adjust the amount of adoption assistance for maintenance. If an adjustment in the amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the agreement shall be amended in writing to specify the adjusted amount of adoption assistance for maintenance.

(d) An agreement to provide adoption assistance may be amended more than once under par. (b) or (c).

(5) RULES. The department shall promulgate rules necessary to implement this section, which shall include all of the following:

(a) A rule defining the extenuating circumstances under which an initial agreement to provide adoption assistance under sub. (4) (a) may be made after adoption. This definition shall include all circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are available to the state if an initial agreement is made after adoption, but may not include circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are not available if an initial agreement is made after adoption.

(b) A rule defining a child with special needs, which shall include a child who the department determines has, at the time of placement for adoption, moderate or intensive difficulty−of−care problems, as defined by the department, or who the department determines is, at the time of placement for adoption, at high risk of developing those problems.

(c) A rule defining the substantial change in circumstances under which adoptive or proposed adoptive parents may request that an agreement made under sub. (4) be amended to increase the amount of adoption assistance for maintenance. The definition shall include all of the following:

1. Situations in which a child who was defined as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty−of−care problems has developed those problems.

2. Situations in which a child's difficulty−of−care problems have increased from the moderate level to the intensive level as set forth in the department's schedule of difficulty−of−care levels promulgated by rule.

(d) Rules establishing requirements for submitting a request under sub. (4) (b), criteria for determining the amount of the increase in adoption assistance for maintenance that the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, and the procedure to appeal the decision of the department regarding the request.

(dm) Rules establishing the criteria for determining the amount of the decrease in adoption assistance for maintenance that the department shall offer under sub. (4) (bm) if a substantial change in circumstances no longer exists and the procedure to appeal the decision of the department regarding the decrease. The criteria shall provide that the amount of the decrease offered by the department under sub. (4) (bm) may not result in an amount of adoption assistance for maintenance that is less than the initial amount of adoption assistance for maintenance provided for the child under sub. (3) (a) 1., 2. or 3.

(e) A rule regarding when a child must be photolisted with the adoption information exchange under s. 48.55 in order to be eligible for adoption assistance. The rule may not require photolisting under any circumstances in which photolisting is not required by federal statutes, regulations or guidelines as a prerequisite for the state to receive federal matching funds for adoption assistance.

History: 1977 c. 418; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446; 1997 a. 308.
Cross Reference: See also ch. HFS 50, Wis. adm. code.

48.977 Appointment of relatives as guardians for certain children in need of protection or services. (1) DEFINITION. In this section, "relative" means a relative as defined in s. 48.02 (15) or a person specified in s. 48.57 (3m) (a) 2.

(2) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a relative of a child as a guardian of the person for the child if the court finds all of the following:

(a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 for a cumulative total period of one year or longer.

(b) That the person nominated as the guardian of the child is a relative of the child with whom the child has been placed and that it is likely that the child will continue to be placed with that relative for an extended period of time or until the child attains the age of 18 years.

(c) That, if appointed, it is likely that the relative would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.

(e) That the child's parent is neglecting, refusing or unable to carry out the duties of a guardian or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian.

(f) That 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, while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with the child's parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are

contrary to the best interests of the child, except that the court is not required to find that the agency has made those reasonable efforts with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the findings specified in this paragraph on a case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the guardianship order. A guardianship order that merely references this paragraph without documenting or referencing that specific information in the order or an amended guardianship order that retroactively corrects an earlier guardianship order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(3) DESIGNATION AS A PERMANENT PLACEMENT. If a court appoints a guardian for a child under sub. (2), the court may designate the child's placement with that guardian as the child's permanent foster placement, but only for purposes of s. 48.368 (2) or 938.368 (2).

(4) PROCEDURE AND DISPOSITION. (a) *Who may file petition.* Any of the following persons may file a petition for the appointment of a guardian for a child under sub. (2):

1. The child or the child's guardian or legal custodian.

2. The child's guardian ad litem.

3. The child's parent.

4. The relative with whom the child is placed if the relative is nominated as the guardian of the child in the petition.

5. The department.

6. A county department under s. 46.22 or 46.23 or, if the child has been placed pursuant to an order under ch. 938, a county department under s. 46.215, 46.22 or 46.23.

7. A licensed child welfare agency that has been assigned primary responsibility for providing services to the child under a court order.

8. The person representing the interests of the public under s. 48.09.

(b) *Contents of petition.* A proceeding for the appointment of a guardian for a child under sub. (2) shall be initiated by a petition which shall be entitled "In the interest of .... (child's name), a person under the age of 18" and shall set forth all of the following with specificity:

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

2. The names and addresses of the child's parent or parents, guardian and legal custodian.

3. The date the child was adjudged in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and the dates that the child has been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365.

4. A statement of the facts and circumstances which the petition alleges establish that the conditions specified in sub. (2) (b) to (f) are met.

5. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.

6. A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (cm) to be served upon all of the following persons:

a. The child if the child is 12 years of age or older.

b. The child's guardian and legal custodian.

c. The child's guardian ad litem.

d. The child's counsel.

e. The child's parent.

f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.

g. The relative with whom the child is placed if the relative is nominated as the guardian of the child in the petition.

h. The person representing the interests of the public under s. 48.09.

i. The agency primarily responsible for providing services to the child under a court order.

2. Service shall be made by 1st class mail at least 7 days before the hearing or by personal service at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or personal service, service shall be made by publication of a notice 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 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.

(cm) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date which allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition. Before accepting a plea of no contest to the allegations in the petition, the court shall do all of the following:

a. Address the parties present and determine that the plea is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential disposition and the nature of the legal consequences of that disposition.

b. Establish whether any promises or threats were made to elicit the plea of no contest and alert all unrepresented parties to the possibility that an attorney may discover grounds to contest the petition that would not be apparent to those parties.

c. Make inquiries to establish to the satisfaction of the court that there is a factual basis for the plea of no contest.

2. If the petition is not contested and if the court accepts the plea of no contest, the court may immediately proceed to a dispositional hearing under par. (fm), unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

3. If the petition is contested or if the court does not accept the plea of no contest, the court shall set a date for a fact−finding hearing under par. (d) which allows reasonable time for the parties to prepare but is not more than 30 days after the plea hearing.

(d) *Fact−finding hearing.* The court shall hold a fact−finding hearing on the petition on the date set by the court under par. (cm) 3., at which any party may present evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f) have been met. If the court, at the conclusion of the fact−finding hearing, finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to (f) have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the fact−finding hearing.

(e) *Court report.* The court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court a report containing the written summary under s. 48.38 (5) (e) and as much information relating to the appointment of a guardian as is reasonably ascertainable. The agency shall file the report at least 48 hours before the date of the dispositional hearing under par. (fm).

(fm) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified or set by the court under par. (cm) 2. or (d), at which any party may present evidence, including expert testimony, relevant to the disposition.

(g) *Dispositional factors.* In determining the appropriate disposition under this section, the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider any report submitted under par. (e) and shall consider, but not be limited to, all of the following:

1. Whether the relative would be a suitable guardian of the child.

2. The willingness and ability of the relative to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.

3. The wishes of the child.

(h) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the relative as the child's guardian is not in the best interests of the child.

2. A disposition ordering that the relative with whom the child has been placed be appointed as the child's guardian under sub. (5) (a) or limited guardian under sub. (5) (b), if the court determines that such an appointment is in the best interests of the child.

(i) *Effect of disposition on permanency plan review process.* After a disposition under par. (h), the child's permanency plan shall continue to be reviewed under s. 48.38 (5), if applicable.

(5) DUTIES AND AUTHORITY OF GUARDIAN. (a) *Full guardianship.* Unless limited under par. (b), a guardian appointed under sub. (2) shall have all of the duties and authority specified in s. 48.023.

(b) *Limited guardianship.* The court may order that the duties and authority of a guardian appointed under sub. (2) be limited. The duties and authority of a limited guardian shall be as specified by the order of appointment under sub. (4) (h) 2. or any revised order under sub. (6). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian appointed under sub. (2) to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

(6) REVISION OF GUARDIANSHIP ORDER. (a) Any person authorized to file a petition under sub. (4) (a) may request a revision in a guardianship order entered under this subsection or sub. (4) (h) 2., 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, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the court's disposition.

(b) The court shall hold a hearing on the matter prior to any revision of the guardianship order if the request or court proposal indicates that new information is available which affects the advisability of the court's guardianship order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

(c) If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or proposal shall be attached to the notice. The court may order a revision if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and if the court determines that a revision would be in the best interests of the child.

(7) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* Unless the court order entered under sub. (4) (h) 2. or (6) specifies that a guardianship under this section be for a lesser period of time, a guardianship under this section shall continue until the child attains the age of 18 years or until terminated by the court, whichever occurs earlier.

(b) *Removal for cause.* 1. Any person authorized to file a petition under sub. (4) (a) may request that a guardian appointed under sub. (2) be removed for cause or the court may, on its own motion, propose such a removal. The request or court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the court's disposition.

2. The court shall hold a hearing on the matter unless written waivers of objections to the removal are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or court proposal shall be attached to the notice. The court shall remove the guardian for cause if, at the hearing, the court finds that it has been proved by clear and convincing evidence that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and if the court determines that removal of the guardian would be in the best interests of the child.

(c) *Resignation.* A guardian appointed under sub. (2) may resign at any time if the resignation is accepted by the court.

(d) *Termination on request of parent.* 1. A parent of the child may request that a guardianship order entered under sub. (4) (h) 2. or a revised order entered under sub. (6) be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child.

2. The court shall hold a hearing on the matter unless written waivers of objections to the termination are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request shall be attached to the notice. The court shall terminate the guardianship if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and the parent is willing and able to carry out the duties of a guardian and if the court determines that termination of the guardianship would be in the best interests of the child.

(e) *Termination on termination of parental rights.* If a court enters an order under s. 48.427 (3p) or 48.428 (2) (b), the court shall terminate the guardianship under this section.

(8) RELATIONSHIP TO CH. 880. (a) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(b) Nothing in this section prohibits an individual from petitioning a court under ch. 880 for appointment of a guardian.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109.

48.978 Appointment or designation of standby guardian of a child. (1) DEFINITIONS. In this section:

(a) "Attending physician" means a physician licensed under ch. 448 who has primary responsibility for the treatment and care of a parent who has filed a petition under sub. (2) (a) or made a written designation under sub. (3) (a) or, if more than one physician has responsibility for the treatment and care of that parent, if a physician is acting on behalf of a physician who has primary responsibility for the treatment and care of that parent or if no physician is responsible for the treatment and care of that parent,

"attending physician" means any physician licensed under ch. 448 who is familiar with the medical condition of that parent.

(b) "Debilitation" means a person's chronic and substantial inability, as a result of a physical illness, disease, impairment or injury, to care for his or her child.

(c) "Incapacity" means a person's chronic and substantial inability, as a result of a mental impairment, to care for his or her child.

(2) JUDICIAL APPOINTMENT. (a) *Who may file petition.* 1. A parent of a child may file a petition for the judicial appointment of a standby guardian of the person or estate or both of the child under this subsection. A parent may include in the petition the nomination of an alternate standby guardian for the court to appoint if the person nominated as standby guardian is unwilling or unable to serve as the child's guardian or if the court determines that appointment of the person nominated as standby guardian as the child's guardian is not in the best interests of the child. Subject to subds. 2. and 3., if a petition is filed under this subdivision, the petition shall be joined by each parent of the child.

2. If a parent of a child cannot with reasonable diligence locate the other parent of the child, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that reasonable diligence, the court may grant the petition.

3. If a parent of a child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that refusal, unwillingness or inability, the court may grant the petition.

(b) *Contents of petition.* A proceeding for the appointment of a standby guardian for a child under this subsection shall be initiated by a petition that shall be entitled "In the interest of .... (child's name), a person under the age of 18" and shall set forth with specificity all of the following:

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

2. The names and addresses of the child's parent or parents, guardian and legal custodian.

3. The name and address of the person nominated as standby guardian and, if the petitioner is nominating an alternate standby guardian, the name and address of the person nominated as alternate standby guardian.

4. The duties and authority that the petitioner wishes the standby guardian to exercise.

5. A statement of whether the duty and authority of the standby guardian are to become effective on the petitioner's incapacity, on the petitioner's death, or on the petitioner's debilitation and consent to the beginning of the duty and authority of the standby guardian, or on whichever occurs first.

6. A statement that there is a significant risk that the petitioner will become incapacitated or debilitated or die, as applicable, within 2 years after the date on which the petition is filed and the factual basis for that statement.

7. If a parent of the child cannot with reasonable diligence locate the other parent of the child, a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duties and authority of guardianship and who, with reasonable diligence, can be located and a statement of the efforts made to locate the other parent.

8. If a parent of the child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship and a statement that the nonpetitioning parent has refused to join in the petition or has indicated that he or she is unwilling or unable to exercise the duty and authority of guardianship.

9. A description of the child's income and assets, if any.

10. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.

11. A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (d) to be served on all of the following persons:

a. The child if the child is 12 years of age or older.

b. The child's guardian and legal custodian.

c. The child's guardian ad litem.

d. The child's counsel.

e. The child's other parent, if that parent has not joined in the petition and if that parent can with reasonable diligence be located.

f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.

g. The person who is nominated as the standby guardian of the child in the petition and, if an alternate standby guardian is nominated in the petition, the person who is nominated as the alternate standby guardian.

2. Service shall be made by certified mail at least 7 days before the hearing or by personal service in the same manner as a summons is served under s. 801.11 (1) (a) or (b) at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or by personal or substituted service, service shall be made by publication of a notice 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 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.

(d) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date that allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition.

2. If the petition is not contested, the court may immediately proceed to a dispositional hearing under par. (g), unless an adjournment is requested under par. (g).

3. If the petition is contested, the court shall set a date for a fact−finding hearing under par. (e) that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(e) *Fact−finding hearing.* The court shall hold a fact−finding hearing on the petition on the date set by the court under par. (d) 3. at which any party may present evidence relevant to any of the following issues:

1. Whether there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. Whether the child has any parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. If a parent cannot be located, whether the petitioner has made diligent efforts to locate that parent.

4. If a parent has refused to join in the petition, whether that refusal is unreasonable.

(f) *Required findings by court.* If the court, at the conclusion of the fact−finding hearing, makes all of the following findings by clear and convincing evidence, the court shall immediately pro-

ceed to a dispositional hearing unless an adjournment is requested under par. (g):

1. That there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. That the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent.

4. That, if a parent has refused to join in the petition, the refusal was unreasonable.

5. That the person nominated as standby guardian is willing and able to act as standby guardian or, if that person is not so willing and able, that the person nominated as alternate standby guardian is willing and able to act as standby guardian.

(g) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified under par. (d) 2. or (e), at which any party may present evidence, including expert testimony, relevant to the disposition. If at the plea hearing or the fact−finding hearing a party requests an adjournment of the dispositional hearing, the court shall set a date for the dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing or fact−finding hearing.

(h) *Dispositional factors.* In determining the appropriate disposition under this par. (j), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person nominated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person nominated as standby guardian or alternate standby guardian to serve as the child's guardian if the petitioner becomes incapacitated or debilitated or dies.

3. The wishes of the child.

(i) *Appearance by petitioner.* If the petitioner is medically unable to appear at a hearing under par. (d), (e) or (g), the court may dispense with the petitioner's appearance, except on the motion of a party and for good cause shown.

(j) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the person nominated as standby guardian or alternate standby guardian as the child's standby guardian is not in the best interests of the child.

2. A disposition ordering that the person nominated as standby guardian or alternate standby guardian be appointed as the child's standby guardian if the court determines that such an appointment is in the best interests of the child.

(k) *Guardianship order.* A standby guardianship order under par. (j) 2. shall include all of the following:

1. A statement of whether the standby guardianship is a full guardianship under sub. (6) (b) 1. or a limited guardianship under sub. (6) (b) 2.

2. A statement of when the standby guardianship goes into effect, which may be on receipt by the standby guardian of a determination of the petitioner's incapacity, a certificate of the petitioner's death, or a determination of the petitioner's debilitation and the petitioner's written consent under par. (L) 3. that the standby guardianship go into effect.

(L) *Commencement of duty and authority of court−appointed standby guardian.* 1. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of the certificate of the petitioner's death.

3. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's debilitation and consent to the standby guardianship going into effect, the duty and authority of a standby guardian shall begin on the receipt by the standby guardian of a determination of debilitation under sub. (4) and a written consent to the beginning of that duty and authority signed by the petitioner in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If the petitioner is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the petitioner and at the direction of the petitioner, in the presence of the petitioner and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

4. The standby guardian shall file the determination of incapacity received under subd. 1., the certificate of death received under subd. 2., or the determination of debilitation and written consent received under subd. 3., whichever is applicable, with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination, certificate, or determination and written consent. If the standby guardian fails to file that determination, certificate, or determination and written consent with that court within those 90 days, the court may rescind the guardianship order.

(m) *Suspension of duty and authority of court−appointed standby guardian.* 1. The duty and authority of a standby guardian appointed under par. (j) 2. shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. The standby guardian shall file the determination of recovery or remission received under subd. 1. with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

3. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (L).

(n) *Rescission of standby guardianship.* 1. If at any time before the duty and authority of a standby guardian appointed under par. (j) 2. begin, the court finds that the findings of the court under par. (f) no longer apply or determines that the determination of the court under par. (j) 2. no longer applies, the court may rescind the guardianship order.

2. A person who is appointed as a standby guardian under par. (j) 2. may, at any time before his or her duty and authority as a standby guardian begin, renounce that appointment by executing a written renunciation, filing the renunciation with the court that issued the guardianship order and notifying the petitioner in writing of the renunciation. On compliance with this subdivision, the court shall rescind the guardianship order.

3. A person who is appointed as a standby guardian under par. (j) 2. may, at any time after his or her duty and authority as standby guardian begin, resign that appointment be executing a written resignation, filing the resignation with the court that issued the guardianship order and notifying the petitioner, if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

4. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time before the duty and authority of the

standby guardian begin by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court shall rescind the guardianship order.

5. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time after the duty and authority of the standby guardian begin by executing a written revocation, filing the written revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(3) PARENTAL DESIGNATION. (a) *Written designation.* A parent may designate a standby guardian for his or her child by means of a written designation signed by the parent in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If a parent is physically unable to sign that written designation, another person 18 years of age or over who is not the standby guardian may sign the written designation on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

(b) *Contents of written designation; form.* 1. A written designation of a standby guardian shall identify the parent who is making the designation, the child who is the subject of the standby guardianship and the person who is designated to be the standby guardian. The written designation shall also state the duties and authority that the parent wishes the standby guardian to exercise and shall indicate that the parent intends for the duty and authority of standby guardian to begin on the parent's incapacity, death, or debilitation and consent under par. (c) 3. to the beginning of the duty and authority of the standby guardian, or on whichever occurs first. A parent may designate an alternate standby guardian in the same written designation and in the same manner as the parent designates the standby guardian.

2. A written designation of a standby guardian complies with this subsection if the written designation substantially conforms to the following form:

DESIGNATION OF STANDBY GUARDIAN

I, ... (name and address of parent), being of sound mind, do hereby designate .... (name and address of standby guardian) as standby guardian of the person and estate of my child(ren) .... (name(s), birth date(s) and address(es) of child(ren)).

(You may, if you wish, provide that the duty and authority of the standby guardian shall extend only to the person, or only to the estate, of your child(ren), by crossing out "person and" or "and estate", whichever is inapplicable, above.)

The duty and authority of the standby guardian shall begin on one of the following events, whichever occurs first:

1. I die.

2. My doctor determines that I am mentally incapacitated, and thus unable to care for my child(ren).

3. My doctor determines that I am physically debilitated, and thus unable to care for my child(ren), and I consent in writing, before 2 witnesses, to the standby guardian's duty and authority taking effect.

If the person I designate above is unwilling or unable to act as standby guardian for my child(ren), I hereby designate .... (name and address of alternate standby guardian) as standby guardian for my child(ren).

I also understand that the duty and authority of the standby guardian designated above will end 180 days after the day on which that duty and authority begin if the standby guardian does not petition the court within those 180 days for an order appointing him or her as standby guardian.

I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship, that I may revoke the standby guardianship at any time before the standby guardianship begins, that I may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on my recovery or remission from my incapacity or debilitation.

Signature.... Date ....

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:
(print) Name ... Date ....
Address ....
Signature ....

Witness No. 2:
(print) Name .... Date ....
Address ....
Signature ....

STATEMENT OF STANDBY GUARDIAN
AND ALTERNATE STANDBY GUARDIAN

I .... (name and address of standby guardian), and I, ... (name and address of alternate standby guardian), understand that .... (name of parent) has designated me to be the standby guardian or alternate standby guardian of the person and estate (cross out "person and" or "and estate", if inapplicable) of his or her child(ren) if he or she dies, becomes mentally incapacitated, or becomes physically debilitated and consents, to my duty and authority taking effect. I hereby declare that I am willing and able to undertake the duty and authority of standby guardianship and I understand that within 180 days after that duty and authority begin I must petition the court for an order appointing me as standby guardian. I further understand that .... (name of parent) retains full parental rights over his or her child(ren) even after the beginning of the standby guardianship, that he or she may revoke the standby guardianship at any time before the standby guardianship begins, that he or she may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on his or her recovery or remission from his or her incapacity or debilitation.

Standby guardian's signature .... Date ....
Address ....

Alternate standby guardian' signature .... Date ....
Address ....

3. A written designation of a standby guardian may also contain a consent to that designation that substantially conforms to the following form and that shall be completed if the child's other parent can be located:

CONSENT TO DESIGNATION OF STANDBY GUARDIAN

I, ... (name and address of other parent), being of sound mind, do hereby consent to the designation by .... (name of designating parent) of .... (name of standby guardian) as standby guardian, and of .... (name of alternate standby guardian) as alternate standby guardian, of the person and estate (cross out "person and" or "and estate", if inapplicable) of my child(ren) .... (name(s), birth date(s) and address(es) of child(ren)).

I also consent to the terms and conditions of the standby guardianship stated above and I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship and that I may revoke my consent to the standby guardianship at any time.

Signature .... Date ....

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:

(print) Name .... Date ....

Address ....

Signature ....

Witness No. 2:

(print) Name .... Date ....

Address ....

Signature ....

(c) *Commencement of duty and authority of designated standby guardian.* 1. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a certificate of the parent's death.

3. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent becoming debilitated and consenting to the beginning of the standby guardianship, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of debilitation under sub. (4) and a copy of the parent's written consent to the beginning of that duty and authority signed by the parent in the presence of 2 witnesses, neither of whom may be the standby guardian, and by the standby guardian. If the parent is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses, neither of whom may be the standby guardian.

4. Subject to par. (d) 2., the standby guardian shall file a petition under par. (e) for judicial appointment as standby guardian of the child within 180 days after the date on which the standby guardianship begins. If the standby guardian fails to file that petition within those 180 days, the standby guardian's duty and authority shall end 180 days after the date on which the standby guardianship began. If the standby guardian files the petition after the expiration of those 180 days, the duty and authority of the standby guardian shall begin again on the date on which the petition is filed.

(d) *Suspension of duty and authority of designated standby guardian.* 1. The duty and authority of a standby guardian designated under par. (a) shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. If the standby guardian receives a determination of recovery or remission under subd. 1. before the standby guardian files the petition under par. (e), the standby guardian need not file the petition under par. (e).

3. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian files the petition under par. (e), but before the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court with which the petition is filed by the time of the next hearing on the petition or within 7 days after the date on which the standby guardian receives that determination, whichever is sooner. On compliance with this subdivision, the court shall dismiss the petition. If the standby guardian fails to file that determination with that court within those 7 days, the court may rescind the guardianship.

4. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

5. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (c).

(e) *Petition for judicial appointment.* A petition for judicial appointment as standby guardian of a child under this subsection shall be in the same form as a petition under sub. (2) (b) and shall set forth with specificity the information specified in sub. (2) (b) 1. to 4. and 7. to 11. The petition shall also contain a statement that the parent has become incapacitated, has died, or has become debilitated and has consented to the beginning of the duty and authority of the standby guardian. In addition, the petition shall be accompanied by the following documentation:

1. The written designation under par. (a) signed or consented to by each parent of the child or, if a parent cannot with reasonable diligence be located or has refused to consent to the designation, the written designation under par. (a) signed by one parent and a statement of the efforts made to find the other parent or of the fact that the other parent has refused to consent to the designation.

2. A copy of the determination of incapacity received under par. (c) 1., the certificate of death received under par. (c) 2. or the determination of debilitation and written consent received under par. (c) 3.

3. If the petition is filed by a person who has been designated as an alternate standby guardian, a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian and the factual basis for that statement.

(f) *Procedure for judicial appointment.* 1. The petitioner shall cause the petition and notice of the time and place of the plea hearing under subd. 2. to be served on all of the persons specified in sub. (2) (c) 1. a. to f. and on the parent who has made the written designation under par. (a), if living. Service shall be made in the manner provided in sub. (2) (c) 2.

2. The court shall hold a plea hearing, a fact−finding hearing and a dispositional hearing in the manner provided in sub. (2) (d) to (g) and shall enter a dispositional order as provided in sub. (2) (j) and (k) 1., except that at the fact−finding hearing any party may present evidence relevant to the issues specified in par. (g), and at the conclusion of that hearing the court shall immediately proceed to a dispositional hearing, unless an adjournment is requested, if the court finds by clear and convincing evidence that the conditions specified in par. (g) have been met.

(g) *Required findings by court.* The court shall appoint a person to be a standby guardian under this subsection if, after making the following findings by clear and convincing evidence, the court determines that the appointment is in the best interests of the child:

1. That the person was designated as standby guardian in accordance with pars. (a) and (b).

2. That the standby guardian has received a determination of incapacity, a death certificate, or a determination of debilitation and written consent, as provided in par. (c) 1., 2. or 3., whichever is applicable.

3. That the child has no parent who is willing and able to exercise the duty and authority of guardianship.

4. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent or, if a parent has refused to consent to the designation of the standby guardian, the consent was unreasonably withheld.

5. That, if the petitioner is a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian.

(h) *Dispositional factors.* In determining the appropriate disposition under par. (g), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person designated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person designated as standby guardian or alternate standby guardian to serve as the child's guardian.

3. The wishes of the child.

(i) *Appearance by parent.* If the parent who has made a written designation under par. (a) is medically unable to appear at a hearing specified in par. (f) 2., the court may dispense with the parent's appearance, except on the motion of a party and for good cause shown.

(j) *Revocation by parent.* 1. A parent who has made a written designation under par. (a) may, at any time before the filing of a petition under par. (e), revoke a standby guardianship created under this subsection by executing a written revocation and notifying the standby guardian in writing of the revocation, making a subsequent written designation under par. (a) or verbally revoking the standby guardianship in the presence of 2 witnesses.

2. After a petition under par. (e) has been filed but before the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court with which the petition has been filed and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may dismiss the petition and rescind the guardianship if the court determines that dismissal of the petition and rescission of the guardianship are in the best interests of the child.

3. After the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(k) *Renunciation of designation.* 1. A person whom a parent has designated as a standby guardian under par. (a) may, at any time before the filing of a petition under par. (e), renounce that designation by executing a written renunciation and notifying the parent, if living, in writing of that renunciation.

2. After a petition under par. (e) has been filed, but before the standby guardian has been judicially appointed under par. (g), a person whom a parent has designated as a standby guardian under par. (a) may renounce that designation by executing a written renunciation, filing the renunciation with the court with which the petition has been filed and notifying the parent, if living, in writing of that renunciation. On compliance with this subdivision, the court may accept the renunciation and rescind the guardianship order if the court finds that the renunciation and rescission are in the best interests of the child.

3. A person who has been judicially appointed as a standby guardian under par. (g) may, at any time after that appointment, resign that appointment by executing a written resignation, filing the resignation with the court that entered the guardianship order and notifying the parent who designated the person as a standby guardian under par. (a), if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

(4) DETERMINATION OF INCAPACITY OR DEBILITATION. (a) *In general.* 1. A determination of incapacity or debilitation under this section shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the cause and nature of the parent's incapacity or debilitation and the extent and probable duration of the incapacity or debilitation.

2. If a standby guardian's identity is known to an attending physician making a determination of incapacity or debilitation, the attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's incapacity or debilitation for purposes of this section.

(c) *Information to be provided to parent.* On receipt of a determination of a parent's incapacity, a standby guardian shall inform the parent of all of the following, if the parent is able to comprehend that information:

1. That a determination of incapacity has been made and, as a result, the duty and authority of the standby guardian have begun.

2. That the parent may revoke the standby guardianship in accordance with sub. (2) (n) 5. or (3) (j) 1., 2. or 3., whichever is applicable.

(5) DETERMINATION OF RECOVERY OR REMISSION. (a) *In general.* 1. A determination that a parent has recovered or is in remission from his or her incapacity or debilitation shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the extent and probable duration of the recovery or remission.

2. If a standby guardian's identity is known to an attending physician making a determination of recovery or remission, the attending physician shall provide a copy of the determination of recovery or remission to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's recovery or remission for purposes of this section.

(6) PARENTAL RIGHTS; DUTY AND AUTHORITY OF STANDBY GUARDIAN. (a) *Parental rights.* The beginning of the duty and authority of a standby guardian under sub. (2) or (3) does not, in itself, divest a parent of any parental rights.

(b) *Duties and authority of guardian.* 1. Unless limited under subd. 2., a standby guardian appointed under sub. (2) or designated under sub. (3) shall have all of the duties and authority specified in s. 48.023.

2. The court may order or a parent may provide that the duties and authority of a standby guardian appointed under sub. (2) or designated under sub. (3) be limited. The duties and authority of a limited standby guardian shall be as specified by the order of appointment under sub. (2) (j) 2. or the written designation under sub. (3) (a). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited standby guardian appointed under sub. (2) or designated under sub. (3) to the extent those provisions are relevant to the duties or authority of the limited standby guardian, except as limited by the order of appointment or written designation.

(7) RELATIONSHIP TO CH. 880. (a) Except when a different right, remedy or procedure is provided under this section, the rights,

remedies and procedures provided in ch. 880 shall govern a standby guardianship created under this section.

(b) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(c) Nothing in this section prohibits an individual from petitioning a court for the appointment of a guardian under ch. 880.

History: 1997 a. 334.

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 and abused unborn children. (1) DEFINITIONS. In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(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, greatgrandparent, 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 employee of a residential facility or residential care center for children and youth 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) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the halfway house program under s. 301.0465, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

NOTE: Par. (b) is amended eff. 7−1−08 by 2003 Wis. Act 33 to read:

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(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.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation 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 the biological child of a member of the tribe or band.

(cv) "Member of a religious order" means an individual who has taken vows devoting himself or herself to religious or spiritual

principles and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service.

(cx) "Member of the clergy" has the meaning given in s. 765.002 (1) or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters.

(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.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) "Relative" means a parent, grandparent, greatgrandparent, 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 or unborn child named in a report or record as any 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.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn 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) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person 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):

1. A physician.

2. A coroner.

3. A medical examiner.

4. A nurse.

5. A dentist.

6. A chiropractor.

7. An optometrist.

8. An acupuncturist.

9. A medical or mental health professional not otherwise specified in this paragraph.

10. A social worker.

11. A marriage and family therapist.

12. A professional counselor.

13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d).

14. A school teacher.

15. A school administrator

16. A school counselor.

17. A mediator under s. 767.11.

18. A child−care worker in a day care center, group home, as described in s. 48.625 (1m), or residential care center for children and youth.

19. A day care provider.

20. An alcohol or other drug abuse counselor.

21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.

22. A physical therapist.

22m. A physical therapist assistant.

23. An occupational therapist.

24. A dietitian.

25. A speech−language pathologist.

26. An audiologist.

27. An emergency medical technician.

28. A first responder.

29. A police or law enforcement officer.

(b) A court−appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236 (3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(bm) 1. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

a. Has been abused, as defined in s. 48.02 (1) (b) to (f); or

b. Has been threatened with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

a. Abused a child, as defined in s. 48.02 (1) (b) to (f).

b. Threatened a child with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par. (a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) 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, as defined in s. 253.07 (1) (b), 1995 stats., 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 in s. 48.02 (1) (b), 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.* 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the 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 of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all cases reported to it. The county department, department, or licensed child welfare agency may require that a subsequent report be made in writing.

3. A county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02 (1) (a), (am), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(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 the health or safety of a child or of an unborn child 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 health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. 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.

2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), that the sheriff or police department will routinely refer 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 Ho−Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, 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 with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho−Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho−Chunk service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child or unborn 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 or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child 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 child 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 par-

ents, guardian or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child 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 agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

NOTE: Subd. 1. was held unconstitutional as applied by the U.S. 7th Circuit Court of Appeals in *Doe v. Heck*, 327 F.3d 492 (2003).

2. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the 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 employee 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 employee 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.

2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the 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 or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the 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 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency 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 or the department. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The 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 the county department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the 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 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 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 the child welfare 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 or of an expectant mother 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 or for abusing an unborn 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; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to 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 an agency 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.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, 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 or a person having physical custody of the expectant mother of an unborn 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 employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county

having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

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 under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, 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.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn 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 or abuse of the unborn 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, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court−appointed special advocate designated under s. 48.236 (1) or person employed by a court−appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07 (5), to the extent necessary for the court−appointed special advocate to perform the advocacy services specified in s. 48.236 (3) that the court−appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

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 under s. 48.57 (1) (e) or (hm) or a 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.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(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 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 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) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency may disclose to the general public a written summary of the information specified in subd. 2. relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has pre-

viously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd. 2.

2. If an agency is permitted to disclose information under subd. 1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

3. An agency may not disclose any of the information described in subd. 2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd. 2. under the circumstances specified in subd. 1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the 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 and of unborn child abuse, 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 and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(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 and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse 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, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the depart-

ment. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). 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 agency 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 and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse 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 agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 Wis. 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; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321.

Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supercede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Boggess, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to, and who does, report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). Phillips v. Behnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of good faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional." Drake v. Huber, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998).

This section provides no basis for civil liability against a person who may, but is not required to, report abuse. Gritzner v. Michael R. 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906.

To "disclose" information under sub. (7), the recipient must have been previously unaware of the information at the time of the communication. The state has the burden to prove beyond a reasonable doubt that the disclosure took place. Sub. (7) is a strict liability statute; intent is not an element of a violation. State v. Polashek, 2002 WI 74, 253 Wis. 2d 527, 646 N.W.2d 330.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section is discussed. 76 Atty. Gen. 286.

Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Atty. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staff members may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on−site interviews on notification of the child's parents. 79 Atty. Gen. 48.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 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. 81 Atty. Gen. 66.

County departments have authority to transport a child to a county−recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3−98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

To the extent sub. (3) (c) 1. authorizes government officials to interview children suspected of being abused on private property and without a warrant, probable cause, consent, or exigent circumstances, it is unconstitutional as applied. However, it can be constitutionally applied, such as when government officials interview a child on public school property when they have definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused by his or her parents or is in imminent danger of parental abuse. Doe v. Heck, 327 F.3d 492 (2003).

This section does not authorize a private cause of action for failure to report. Isley v. Capucian Province, 880 F. Supp. 1138 (1995).

48.982 Child abuse and neglect prevention board.

(1) DEFINITIONS. In this section:

(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" has the meaning given in s. 48.981 (1) (d).

(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, other than moneys received under s. 341.14 (6r) (b) 6., may be credited to the appropriation accounts under s. 20.433 (1) (i) or (q). Interest earned on moneys received under s. 341.14 (6r) (b) 6. may be credited to the appropriation account under s. 20.433 (1) (q).

(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 family 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.

(2e) NONSTOCK, NONPROFIT CORPORATION. (a) The board may organize and maintain a nonstock, nonprofit corporation under ch. 181 for the exclusive purpose of soliciting and accepting contributions, grants, gifts and bequests for the children's trust fund. Any contributions, grants, gifts or bequests accepted by the corporation shall be deposited in the children's trust fund and, in accordance with the wishes of the donor, shall be used for any of the purposes specified in sub. (2m) or shall continue to accumulate in the children's trust fund pursuant to s. 25.67 (2).

(b) The board shall enter into a contract with any corporation organized and maintained under par. (a). The contract shall provide that the board may make use of the services of the corporation and that the board may provide administrative services to the corporation. The type and scope of any administrative services provided by the board to the corporation and the board employees assigned to perform the services shall be determined by the board. The corporation may neither employ staff nor engage in political activities.

(c) The corporation under par. (a) shall donate any real property to the state within 5 years after acquiring the property unless holding the property for more than 5 years is consistent with sound business and financial practices and is approved by the joint committee on finance.

(d) The board, the department of administration, the legislative fiscal bureau, the legislative audit bureau and the appropriate committee of each house of the legislature, as determined by the presiding officer, may examine all records of the corporation.

(e) The board of directors of any corporation established under this subsection shall consist of 5 members, including the chairperson of the board and 4 members of the board, elected by the board, of which one shall be a legislator. No 2 members of the board of directors may be from the same category of board members under s. 15.195 (4) (a) to (g).

(f) Any corporation established under this subsection shall be organized so that contributions to it will be deductible from adjusted gross income under section 170 of the Internal Revenue Code, as defined under s. 71.01 (6), and so that the corporation will be exempt from taxation under section 501 of the Internal Revenue Code, as defined under s. 71.22 (4), and under s. 71.26 (1) (a).

(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) and appropriated under s. 20.433 (1) (q), 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 (q).

(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 $30,000.

(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 (q), 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) (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 $150,000 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. For organizations applying for grants for the first time on or after July 1, 1998, the board shall give favorable consideration in awarding grants to organizations for programs in communities where home

visitation programs that provide in−home visitation services to parents with newborn infants are in existence or are in development and, if grants are awarded, shall require programs supported by grants to maximize coordination with these home visitation programs. 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) (h), (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 30% 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; 1995 a. 27 ss. 2622 to 2623d, 9126 (19); 1995 a. 275; 1997 a. 27, 78, 252, 293; 1999 a. 9; 2001 a. 16.

48.985 Expenditure of federal child welfare funds. **(1)** FEDERAL PROGRAM OPERATIONS. From the appropriation under s. 20.435 (3) (n), the department shall expend not more than $273,700 in each fiscal year of the moneys received under 42 USC 620 to 626 for the department's expenses in connection with administering the expenditure of funds received under 42 USC 620 to 626 and for child abuse and neglect and unborn child abuse independent investigations.

(2) COMMUNITY SOCIAL AND MENTAL HYGIENE SERVICES. From the appropriation under s. 20.435 (7) (o), the department shall distribute not more than $3,809,600 in each fiscal year of the moneys received under 42 USC 620 to 626 to county departments under ss. 46.215, 46.22, and 46.23 for the provision or purchase of child welfare projects and services, for services to children and families, for services to the expectant mothers of unborn children, and for family−based child welfare services.

(3) COMMUNITY YOUTH AND FAMILY AIDS. From the appropriation account under s. 20.410 (3) (ko), the department of corrections shall allocate, to county departments under ss. 46.215, 46.22 and 46.23 for the provision of services under s. 301.26, not more than $1,100,000 in each fiscal year.

(4) RUNAWAY SERVICES. From the appropriation under s. 20.435 (3) (na) for runaway services, not more than $458,600 in each fiscal year.

(5) MILWAUKEE CHILD WELFARE AIDS. Of the amounts received under 42 USC 620 to 626 and credited to the appropriation account under s. 20.435 (3) (nL), the department shall transfer $58,600 in fiscal year 2001−02 and $66,800 in fiscal year 2002−03 to the appropriation account under s. 20.435 (3) (kw) and shall expend those moneys to provide services to children and families under s. 48.48 (17).

History: 1987 a. 27; 1989 a. 31, 107; 1991 a. 39, 269; 1993 a. 16, 446; 1995 a. 27; 1997 a. 27, 292; 1999 a. 9; 2001 a. 16; 2003 a. 33.

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 per-

sons 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, in a child−caring agency, or in a residential care center for children and youth, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or 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 employee thereof; a subdivision of a party state, or officer or employee 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 the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or 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; 1997 a. 104; 1999 a. 32; 2001 a. 59.

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 family services.

(b) "Appropriate public authorities" means the department of health and family 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; 1995 a. 27 s. 9126 (19).

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.