



**FRIDAY**  
**State of Wisconsin**  
**2009 - 2010 LEGISLATURE**

IN 3130

From '09 draft

1762/PI

LRB-09034K

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**2009 SENATE BILL 706**

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SA 11 ✓

P.O.W.F.

~~April 22, 2010 - Introduced by Senator TAYLOR. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.~~

Genlat

Repeals to

1 AN ACT *to repeal* 938.345 (4); *to renumber and amend* 54.56, 54.57 and  
2 808.075 (4) (f) 3.; *to amend* 48.02 (8), 48.023 (intro.), 48.023 (3), 48.023 (4),  
3 48.09 (5), 48.14 (2) (b), 48.14 (11), 48.235 (1) (c), 48.255 (1) (cm), 48.255 (1m) (d),  
4 48.299 (4) (a), 48.299 (4) (b), 48.345 (intro.), 48.345 (3) (a), 48.368 (1), 48.42 (1)  
5 (d), 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (2) (a), 48.977 (2) (e), 48.977 (2)  
6 (f), 48.977 (4) (b) 3., 48.977 (4) (b) 6., 48.977 (4) (c) 2., 48.977 (4) (i), 48.977 (8),  
7 48.978 (2) (b) 11., 48.978 (7), 49.32 (1) (am), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18.  
8 c., 54.01 (10), 54.10 (1), 54.52 (1), 55.03 (1), 55.10 (4) (intro.), 55.10 (4) (a), 115.76  
9 (12) (b) 2., 146.82 (2) (a) 9. a., 146.82 (2) (a) 9. c., 214.37 (4) (k) 1., 215.26 (8) (e)  
10 1., 757.69 (1m) (e), 808.075 (4) (a) 11., 814.66 (1) (m), 938.02 (8), 938.255 (1) (cm),  
11 938.34 (3) (a), 938.34 (3) (c), 938.345 (1) (e), 938.355 (6) (an) 1., 938.355 (6) (b)  
12 and 938.355 (6m) (am) 1.; *to repeal and recreate* 48.62 (2) and 938.34 (3) (c);

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- 1 and **to create** 48.235 (3) (c), 48.976, 48.979, 808.075 (4) (a) 9m. and 808.075 (4)  
2 (a) 13. of the statutes; **relating to:** guardianships of children.

***Analysis by the Legislative Reference Bureau*****INTRODUCTION**

Current law permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to appoint a guardian of the person of a child under the Children's Code only under certain circumstances, including:

1. When a child does not have a living parent and a finding as to the adoptability of the child is sought.

2. When a child who has been adjudged to be in need of protection or services under the Children's Code, or adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of uncontrollability, and placed outside the home is likely to be placed in the home of the guardian for an extended period or until the child attains the age of 18 years, it is not in the best interests of the child that a petition for termination of parental rights be filed, and the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian (protection or services guardianship).

3. When a parent wishes to have a standby guardian appointed to assume the duties and authority of guardianship on the incapacity or debilitation of the parent.

Under any other circumstances, however, the chapter of the statutes governing guardianships generally, which include guardianships of the estates of children and guardianships of the persons and estates of adults who are found incompetent, govern a guardianship of the person of a child.

This bill removes guardianships of the persons of children from the chapter of the statutes governing guardianships generally and instead creates a new provision in the Children's Code that may be used for the appointment of a guardian of the person of a child. The bill also makes certain changes relating to protection or services guardianships, and permits a parent ~~guardian, or legal custodian~~ to delegate by a power of attorney his or her powers regarding the care and custody of a child.

and  
standby  
guardianships

**THE BILL*****Types of guardianships***

***Full guardianships.*** Under the bill, the juvenile court may appoint a guardian to be a child's full guardian when the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or when other compelling facts and circumstances demonstrate that a full guardianship is necessary.

Under current law, a full guardian 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. Those duties and authority include: 1) the authority to consent to marriage,

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enlistment in the U.S. Armed Forces, major medical, psychiatric, and surgical treatment, and to obtaining a driver's license; 2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child; 3) the right and duty of reasonable visitation of the child; and 4) the rights and responsibilities of legal custody, which rights and responsibilities include 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 for the child.

This bill expands the duties and authority of a full guardian of a child to include the authority to determine reasonable visitation with the child, the rights and responsibilities of physical custody of the child, and the right to change the residence of the child to another state.

The bill also specifies that a guardian acting on behalf of a child may exercise only those powers that the guardian is authorized to exercise by statute or juvenile court order and that the juvenile court may authorize a guardian to exercise only those powers that are necessary to provide for the care, custody, and control of the child and to exercise those powers in a manner that is appropriate to the child. Otherwise, the parent retains all rights and duties accruing to the parent as a result of the parent-child relationship that are not assigned to the guardian or otherwise limited by statute or juvenile court order.

**Limited guardianships.** Under the bill, the juvenile court may appoint a guardian to be a child's limited guardian when the child's parents need assistance in providing for the care, custody, and control of the child. Under a limited guardianship, the duties and authority of the guardian are limited as specified by the order appointing the guardian. The juvenile court may limit the authority of a guardian to allow the parent to retain such power to make decisions as is within the parent's ability to exercise effectively and may limit the physical custody of the guardian to allow shared physical custody with the parent if shared physical custody is in the best interests of the child. The juvenile court must set an expiration date for a limited guardianship order, which may be extended for good cause shown.

**Temporary guardianships.** Under the bill, the juvenile court may appoint a guardian to be a child's temporary guardian when the child's particular situation, including the inability of the child's parent to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian. The order appointing a temporary guardian must specify the authority of the guardian, which must be limited to those acts that are reasonably related to the reasons for the appointment as specified in the petition for temporary guardianship. A temporary guardianship may not exceed 180 days, but may be extended for one additional 180-day period for good cause shown. A temporary guardianship ceases on expiration of that period or on termination of the situation of the child that was the cause of the temporary guardianship.

**Emergency guardianships.** Under the bill, the juvenile court may appoint a guardian to be a child's emergency guardian when the child's welfare requires the immediate appointment of an emergency guardian. The order appointing an emergency guardian must specify the authority of the guardian, which must be

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limited to those acts that are reasonably related to the reasons for the appointment as specified in the petition for emergency guardianship. An emergency guardianship may not exceed 60 days and ceases on expiration of that period or on termination of the situation of the child that was the cause of the emergency guardianship.

***Procedures for appointment of full, limited, or temporary guardian***

**Petition.** Any person, including a child 12 years of age or over on his or her own behalf, may petition for the appointment of a guardian of a child. The petitioner must cause the petition and notice of the time and place of the hearing on the petition to be served upon all interested persons, as defined in the bill, unless notice is waived by an interested person or by the juvenile court for good cause shown.

For purposes of a petition for guardianship of a child, "interested person" means: 1) the child, if 12 years of age or over, and the child's guardian ad litem and counsel, if any; 2) the child's parents, current guardian, legal custodian, and physical custodian; 3) if the child is a nonmarital child whose parents have not intermarried and if paternity of the child has not been established, any person who has filed a declaration of parental interest and any person who is alleged to be, or who may be, the father of the child; 4) the individual who is nominated as the guardian; 5) if the child has no living parent, any individual nominated to act as fiduciary for the child in a will or other written instrument executed by a parent of the child; 6) if the child is receiving any public services or benefits, the county department of human services or social services (county department) or, in Milwaukee County, the Department of Children and Families (DCF); 7) if the child is an Indian child, the child's Indian custodian and tribe; and 8) any other person that the juvenile court may require.

**Guardian ad litem.** The juvenile court must appoint a guardian ad litem (GAL) for a child who is the subject of a guardianship proceeding. In addition to his or her general duty to advocate for the best interests of the child, a GAL appointed for a child who is the subject of a guardianship proceeding must, unless granted leave by the juvenile court not to do so, do all of the following:

1. Personally, or through a trained designee, meet with the child, assess the appropriateness and safety of the environment of the child, and, if appropriate to the age and developmental level of the child, interview the child and determine the child's goals and concerns regarding the proposed guardianship. If the child is 12 years of age or over, the GAL must also advise the child that he or she may request the appointment of counsel or retain counsel of his or her own choosing to oppose the guardianship petition.

2. Interview the proposed guardian, personally or through a trained designee, visit the guardian's home, if appropriate, and report to the juvenile court concerning the suitability of the proposed guardian to serve as guardian of the child.

3. Attend all juvenile court proceedings relating to the guardianship, present evidence concerning the best interests of the child, if necessary, and make clear and specific recommendations to the juvenile court concerning the best interests of the child at every stage of the guardianship proceeding.

**Statement by proposed guardian.** At least 96 hours before the hearing on the petition, the proposed guardian must submit to the juvenile court a sworn and notarized statement as to the number of persons for whom the proposed guardian is

or as a successor guardian  
In addition to the text for purposes of standing to present evidence and argument in any proceeding on a guardianship petition, the bill defines a party as the petitioner and any interested person other than a person who is alleged to be or who may be the father of the child.

or in need of

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The bill defines "party" as

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responsible, whether as a parent, guardian, or legal custodian, as to the proposed guardian's income, assets, debts, and living expenses, and as to whether the proposed guardian is currently charged with or has been convicted of a crime or has been determined under the child abuse and neglect reporting law to have abused or neglected a child.

**Hearing.** The initial hearing on a guardianship petition must be heard within 30 days after the filing of the petition. If the petition is not contested, the juvenile court must immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested or an adjournment is requested, the juvenile court must set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing.

If the petition is contested, ~~on the request of any interested person or on the juvenile court's own motion~~, the juvenile court may order the county department, a licensed child welfare agency, or, in Milwaukee County, DCF or an agency under contract with DCF to conduct an investigation ~~to determine whether the child is a proper subject for guardianship and whether the proposed guardian's home is suitable for the child.~~ The person conducting the investigation must file a report of the investigation with the juvenile court at least 96 hours before the fact-finding and dispositional hearing, and the parents of the child and the proposed guardian must reimburse that person for the cost of the investigation according to a fee schedule established by DCF based on ability to pay.

The proposed guardian and any ~~standing~~ <sup>successor</sup> guardian, which is a person designated to become guardian on the death, unwillingness or inability to act, resignation, or removal of the guardian or to act as guardian during a period of temporary inability of the guardian to fulfill his or her duties, must be physically present at the hearing, unless excused by the juvenile court or the juvenile court permits attendance by telephone. The child is not required to attend the hearing, but if the child has nominated the guardian, the child must provide to his or her GAL sufficient information for the GAL to advise the juvenile court whether the nomination is in the best interests of the child. ~~Any other interested person may participate in the hearing if the juvenile court determines that the interested person is a necessary party.~~

**Dispositional factors.** In determining the appropriate disposition of a guardianship petition, the juvenile court must consider all of the following factors:

1. Any nomination of a guardian made by a parent or by the child, if 12 years of age or over, and the opinions of the parents and child as to what is in the best interests of the child.
2. Whether the proposed guardian would be fit, willing, and able to serve as the guardian of the child.
3. If the child is an Indian child, the order of placement preference required for an Indian child in an Indian child custody proceeding, unless the juvenile court finds good cause for departing from that order.
4. Whether appointment of the proposed guardian is in the best interests of the child.

any party  
A may request for the juvenile court may propose on its own motion that an investigation be conducted to determine whether the child is a proper subject for guardianship and whether the proposed guardian's home is suitable for the child. If the juvenile court determines that such an investigation is necessary and that the welfare of the child demands such an investigation

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*Disposition.* At the conclusion of the fact-finding and dispositional hearing, the juvenile court must either: 1) dismiss the petition if the juvenile court finds that the petitioner has not proved the allegations in the petition by clear and convincing evidence or determines that appointment of the proposed guardian is not in the best interests of the child; or 2) order the proposed guardian to be appointed as the child's guardian if the juvenile court finds that the petitioner has proved those allegations by clear and convincing evidence and determines that the appointment is in the best interests of the child. A disposition ordering the appointment of a guardian may also designate an amount of support to be paid by the child's parents and may include reasonable rules of parental visitation.

***Procedures for appointment of emergency guardian***

*Petition.* Any person may petition for the appointment of an emergency guardian for a child. The petitioner must give notice of the petition and of the time and place of the hearing on the petition to the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel, if any; the child's parents, guardian, and legal custodian; and the person nominated as emergency guardian. Notice of the petition and a copy of the petition must be served by the most practical means possible, including personal service or service by electronic mail or telephone, as soon after the filing of the petition as possible and must include notice of the right to counsel and of the right to petition for reconsideration or modification of the emergency guardianship.

*GAL.* The juvenile court must appoint a GAL for the child as soon as possible after the filing of the petition and must attempt to appoint the GAL before the hearing on the petition, but may appoint the GAL after the hearing if exigent circumstances require the immediate appointment of an emergency guardian. The GAL must attempt to meet with the child before the hearing or as soon as is practicable after the hearing, but not later than three days after the hearing, and must report to the juvenile court on the advisability of the emergency guardianship at the hearing or not later than seven days after the hearing.

*Hearing.* The juvenile court must hold a hearing on the emergency guardianship petition as soon as possible after the filing of the petition or, for good cause shown, may issue a temporary order appointing an emergency guardian without a hearing, which remains in effect until a hearing is held on the petition. If the juvenile court appoints an emergency guardian, any person entitled to receive notice of the emergency guardianship petition may petition for reconsideration or modification of the emergency guardianship and the juvenile court must hold a rehearing on the issue of appointment of the emergency guardian within 30 days after the filing of the petition.

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

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*Post-appointment procedures*

~~**Successor guardian.** If a guardian dies, is removed by order of the juvenile court, or resigns and the resignation is accepted by the juvenile court, the juvenile court may appoint a competent and suitable person as successor guardian.~~ The appointment may be made on the juvenile court's own motion or on the petition of any interested person, which, for purposes of proceedings subsequent to an order for guardianship of a child, means: 1) the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel; 2) the guardian; 3) the child's parents; 4) the county of venue, if the county has an interest in the guardianship; 5) if the child is an Indian child, the child's tribe; and 6) any other person that the juvenile court may require.

A successor guardian may be appointed without a hearing, but the juvenile court may, upon request of any interested person or on its own motion, direct that the petition or motion for the appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian. If a successor is appointed without a hearing, the successor guardian must provide notice to all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the appointment.

**Modification of guardianship order.** Any interested person or other person approved by the juvenile court may request a modification of a guardianship order or the juvenile court may, on its own motion, propose such a modification. The request or motion must set forth in detail the nature of the proposed modification, 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 modification would be in the best interests of the child, and allege any other information that affects the advisability of the juvenile court's disposition. The juvenile court must hold a hearing on the matter prior to any modification of the guardianship order if the request or motion indicates that new information is available that affects the advisability of the juvenile court's guardianship order, unless written waivers of objections to the modification are signed by all interested persons and the juvenile court approves the waivers. The juvenile court may order a modification if, at the hearing, the juvenile court finds that the person proposing the modification has proved by clear and convincing evidence that there has been a substantial change in circumstances and determines that a modification would be in the best interests of the child.

**Review of conduct of guardian.** The juvenile court that appointed the guardian of a child has continuing jurisdiction over the guardian and may impose certain remedies if the guardian abuses or neglects the child or knowingly permits others to do so, fails to disclose information that would have prevented his or her appointment as guardian, or otherwise fails to perform any of his or her duties as guardian. If the juvenile court finds by clear and convincing evidence that any of those circumstances apply, the juvenile court may remove the guardian, remove the guardian and appoint a successor guardian, enter any other order that may be necessary or appropriate to compel the guardian to carry out his or her duties, modify

After a guardian has died, been removed, or resigned

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the duties and authority of the guardian, or, if the guardian's conduct was egregious, require the guardian to pay any costs of the proceeding.

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

A parent may request that a guardianship be terminated by filing a petition with the juvenile court alleging 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 fit, willing, and able to carry out the duties of a guardian, and that termination of the guardianship would be in the best interests of the child. The juvenile court must hold a hearing on the petition, unless written waivers of objections to termination of the guardianship are signed by all interested persons and the juvenile court approves the waivers. The juvenile court must terminate the guardianship if the juvenile court finds that the parent has proved by clear and convincing evidence that he or she has remedied the unfitness, unwillingness, or inability to provide for the care, custody, and control of the child or the compelling facts and circumstances on which the guardianship was granted and that he or she is now fit, willing, and able to carry out the duties of a guardian and the juvenile court determines that termination of the guardianship would be in the best interests of the child.

***Protection or services guardianships***

Under the current Children's Code, a protection or services guardianship may be ordered when a child who has been adjudged to be in need of protection or services under the Children's Code, or adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of uncontrollability, and placed outside the home is likely to be placed in the home of the guardian for an extended period or until the child attains the age of 18 years, it is not in the best interests of the child that a petition for termination of parental rights be filed, and the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian.

This bill expands the applicability of a protection or services guardianship to include a child under ten years of age who has been adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of having committed a delinquent act and a child ten years of age or over who has been adjudged delinquent. The bill also permits such a guardianship to be ordered not only when the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian but also when the child's parent is not meeting the conditions established in a juvenile court order for the safe return of the child to the home.

Under current law, service of a petition for a protection or services guardianship and notice of hearing on the petition may be made by 1st class mail, by personal service or, if with reasonable diligence a party cannot be served by mail or by personal



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service, by publication of the notice in a newspaper that is likely to give notice to the parties. This bill eliminates service by publication for a protection or services guardianship petition.

*amend*

~~**Delegation of power by parent, guardian, or legal custodian**~~

~~Finally, the bill permits a parent, guardian, or legal custodian of a child, by a properly executed power of attorney, to delegate to another person, for a period not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child,~~

~~an adult relative of the child~~

~~who has legal custody~~

~~or the well-being of the child in the U.S. armed forces~~

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 48.02 (8) of the statutes is amended to read:

2 48.02 (8) "Guardian" means the person named by the court having the duty and  
3 authority of ~~guardianship~~ guardian of the person of a child under s. 48.023.

4 SECTION 2. 48.023 (intro.) of the statutes is amended to read:

5 **48.023 Guardianship.** (intro.) Except as limited by an order of the court  
6 under s. 48.976 (2) (c) 2., 48.977 (5) (b), or 48.978 (6) (b) 2., a person appointed by the

7

8 court to be the <sup>of the person</sup> guardian of a child under this chapter has the duty and authority to  
9 make important decisions in matters having a permanent effect on the life and  
10 development of the child and the duty to be concerned about the child's general  
11 welfare, including ~~but not limited to~~ all of the following:

12 SECTION 3. 48.023 (3) of the statutes is amended to read:

13 48.023 (3) The right and duty of reasonable visitation of with the child and,  
14 subject to an order of a court of competent jurisdiction, the authority to determine  
15 reasonable visitation with the child.

SECTION 4. 48.023 (4) of the statutes is amended to read:

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## SECTION 4

1           48.023 (4) The rights and responsibilities of physical custody and legal custody,  
2 including the right to change the residence of the child from this state to another  
3 state, except when physical custody or legal custody has been vested in another  
4 person or when the child is under the supervision of the department of corrections  
5 under s. 938.183, 938.34 (4h), (4m) or (4n), or 938.357 (4) or the supervision of a  
6 county department under s. 938.34 (4d) or (4n).

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

8           48.09 (5) By the district attorney or, if designated by the county board of  
9 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,  
10 48.976, or 48.977. If the county board transfers this authority to or from the district  
11 attorney on or after May 11, 1990, the board may do so only if the action is effective  
12 on September 1 of an odd-numbered year and the board notifies the department of  
13 administration of that change by January 1 of that odd-numbered year.

14           **SECTION 6.** 48.14 (2) (b) of the statutes is amended to read:

15           48.14 (2) (b) The appointment and removal of a guardian of the person for a  
16 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977,  
17 and 48.978 ~~and ch. 54~~ and for a child found to be in need of protection or services  
18 under s. 48.13 because the child is without parent or guardian.

19           **SECTION 7.** 48.14 (11) of the statutes is amended to read: ✓

20           48.14 (11) Granting visitation privileges under s. ~~54.56~~ 48.976 (11).

21           **SECTION 8.** 48.235 (1) (c) of the statutes is amended to read:

22           48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is  
23 the subject of a proceeding to terminate parental rights, whether voluntary or  
24 involuntary, for a child who is the subject of a contested adoption proceeding, and for  
25 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

19  
Insert  
20  
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^

1 SECTION 9. 48.235 (3) (c) of the statutes is created to read:

2 48.235 (3) (c) In addition to any other duties and responsibilities required of  
3 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of  
4 a proceeding under s. 48.976 shall do all of the following unless granted leave by the  
5 court not to do so:

6 1. Personally, or through a trained designee, meet with the child, assess the  
7 appropriateness and safety of the environment of the child, and, if appropriate to the  
8 age and developmental level of the child, interview the child and determine the  
9 child's goals and concerns regarding the proposed guardianship. If the child is 12  
10 years of age or over, the guardian ad litem shall also advise the child that he or she  
11 may request the appointment of counsel or retain counsel of his or her own choosing.

12 2. Interview the proposed guardian, personally or through a trained designee,  
13 visit the guardian's home, if appropriate, and report to the court concerning the  
14 suitability of the proposed guardian to serve as guardian of the child.

15 3. Attend all court proceedings relating to the guardianship, present evidence  
16 concerning the best interests of the child, if necessary, and make clear and specific  
17 recommendations to the court concerning the best interests of the child at every stage  
18 of the proceeding.

Insert  
11-19

19 4. Report to the court on any matter that the court requests.

20 SECTION 10. 48.255 (1) (cm) of the statutes ~~as affected by 2009 Wisconsin Act~~

21 04 is amended to read:

22 48.255 (1) (cm) Whether the child may be subject to s. 48.028 or the federal  
23 Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to  
24 s. 48.028 or that act, the names and addresses of the child's Indian custodian, if any,  
25 and Indian tribe, if known.

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## SECTION 11

① SECTION 11. 48.255 (1m) (d) of the statutes ~~as affected by 2009 Wisconsin Act~~

② ~~BA~~ is amended to read:

3 48.255 (1m) (d) Whether the unborn child, when born, may be subject to s.  
4 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the  
5 unborn child may be subject to s. 48.028 or that act, the name and address of the  
6 Indian tribe in which the unborn child may be eligible for affiliation when born, if  
7 known.

8 SECTION 12. 48.299 (4) (a) of the statutes is amended to read:

9 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at  
10 the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978  
11 (2) (e) and (3) (f) 2.

12 SECTION 13. 48.299 (4) (b) of the statutes is amended to read:

13 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
14 statutory rules of evidence are binding at a hearing for a child held in custody under  
15 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a  
16 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing  
17 about changes in placement, revision of dispositional orders, extension of  
18 dispositional orders or termination of guardianship orders entered under s. 48.976,  
19 48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall  
20 admit all testimony having reasonable probative value, but shall exclude  
21 immaterial, irrelevant or unduly repetitious testimony or evidence that is  
22 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has  
23 demonstrable circumstantial guarantees of trustworthiness. The court shall give  
24 effect to the rules of privilege recognized by law. The court shall apply the basic  
25 principles of relevancy, materiality and probative value to proof of all questions of

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fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

**SECTION 14.** 48.345 (intro.) of the statutes is amended to read:

**48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services.** (intro.) 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 this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled, mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that exclusively ~~treat~~ treats 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:

**SECTION 15.** 48.345 (3) (a) of the statutes is amended to read:

48.345 **(3)** (a) The home of a parent ~~or~~, other relative, or guardian of the child, except that the judge may not designate the home of a parent ~~or~~, other relative, or guardian of the child as the child's placement if the parent ~~or~~, other relative, 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 judge

Insert  
13-22

## SENATE BILL 706

1 determines by clear and convincing evidence that the placement would be in the best  
2 interests of the child. The judge shall consider the wishes of the child in making that  
3 determination.

4 **SECTION 16.** 48.368 (1) of the statutes is amended to read:

5 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41  
6 or 48.415 or an appeal from a judgment terminating or denying termination of  
7 parental rights is filed during the year in which a dispositional order under s. 48.355,  
8 an extension order under s. 48.365, a voluntary agreement for placement of the child  
9 under s. 48.63, or a guardianship order under ch. 54, 2007 stats., or ch. 880, 2003  
10 stats., or s. 48.976 or 48.977 or ch. 54 is in effect, the dispositional or extension order,  
11 voluntary agreement, or guardianship order shall remain in effect until all  
12 proceedings related to the filing of the petition or an appeal are concluded.

13 **SECTION 17.** 48.42 (1) (d) of the statutes ~~as affected by 2009 Wisconsin Act 94,~~  
14 is amended to read:

15 48.42 (1) (d) A statement of whether the child may be subject to s. 48.028 or the  
16 federal Indian & Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be  
17 subject to s. 48.028 or that act, the names of the child's Indian custodian, if any, and  
18 tribe, if known.

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

20 ~~48.62 (2) A relative, or a guardian of a child who provides care and  
21 maintenance for the child is not required to obtain the license specified in this  
22 section. The department, county department, or licensed child welfare agency as  
23 provided in s. 48.75 may issue a license to operate a foster home or a treatment foster  
24 home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests  
25 a license to operate a foster home or treatment foster home for a specific child who~~

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1 is either placed by court order or who is the subject of a voluntary placement  
2 agreement under s. 48.63. The department, a county department, or a licensed child  
3 welfare agency may, at the request of a guardian appointed under s. ~~48.976, 48.977,~~  
4 or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the guardian's home as  
5 a foster home or treatment foster home for the guardian's minor ward who is living  
6 in the home and who is placed in the home by court order. Relatives with no duty of  
7 support and guardians appointed under s. 48.976, 48.977, or ~~48.978,~~ ch. 54, 2007  
8 stats., or ch. 880, 2003 stats., who are licensed to operate foster homes or treatment  
9 foster homes are subject to the department's licensing rules.

10 **SECTION 19.** 48.62 (2) of the statutes, as affected by 2009 Wisconsin Acts 28 and  
11 .... (this act), is repealed and recreated to read:

12 48.62 (2) A relative or a guardian of a child who provides care and maintenance  
13 for the child is not required to obtain the license specified in this section. The  
14 department, county department, or licensed child welfare agency as provided in s.  
15 48.75 may issue a license to operate a foster home to a relative who has no duty of  
16 support under s. 49.90 (1) (a) and who requests a license to operate a foster home for  
17 a specific child who is either placed by court order or who is the subject of a voluntary  
18 placement agreement under s. 48.63. The department, a county department, or a  
19 licensed child welfare agency may, at the request of a guardian appointed under s.  
20 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the  
21 guardian's home as a foster home for the guardian's minor ward who is living in the  
22 home and who is placed in the home by court order. Relatives with no duty of support  
23 and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or  
24 ch. 880, 2003 stats., who are licensed to operate foster homes are subject to the  
25 department's licensing rules.

Insert  
15-25

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1 SECTION 20. 48.831 (1) of the statutes is amended to read:

2 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment  
3 of a guardian of a child who does not have a living parent if a finding as to the  
4 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~  
5 s. 48.976 applies to the appointment of a guardian for a child who does not have a  
6 living parent for all other purposes. An appointment of a guardian of the estate of  
7 a child who does not have a living parent shall be conducted in accordance with the  
8 procedures specified in ch. 54.

9 SECTION 21. 48.831 (1m) (e) of the statutes is amended to read:

10 48.831 (1m) (e) A guardian appointed under s. 48.976, ch. 54, 2001 stats., or  
11 ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court  
12 under s. 48.976 (10), 54.54 (1), 2001 stats., or s. 880.17 (1), 2003 stats.

13 SECTION 22. 48.976 of the statutes is created to read:

14 **48.976 Appointment of guardian of the person of a child. (1) DEFINITION**

15 In this section, ~~"interested person" means any of the following:~~ <sup>states</sup>

1. For

16 ~~(a) For~~ purposes of a petition for guardianship of a child, any of the following:

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

19 (b) The child's parents, guardian, legal custodian, and physical custodian.

20 (c) Any person who has filed a declaration of paternal interest under s. 48.025,  
21 who is alleged to the court to be the father of the child, or who may, based on the  
22 statements of the mother or other information presented to the court, be the father  
23 of the child.

24 (d) Any individual who is nominated as guardian.

or as a successor guardian

(a) Interested person means any of the following:



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1 (e) If the child has no living parent, any individual nominated to act as fiduciary  
2 for the child in a will or other written instrument that was executed by a parent of  
3 the child.

4 (f) If the child is receiving <sup>or in need of</sup> any public services or benefits, the county department  
5 or, in a county having a population of ~~500,000~~ <sup>750,000</sup> or more, the department that is  
6 providing the services or benefits, through the person representing the interests of  
7 the public under s. 48.09.

8 (g) If the child is an Indian child, the Indian child's Indian custodian and Indian  
9 tribe.

10 (h) Any other person that the court may require.

11 (2) For purposes of proceedings subsequent to an order for guardianship of a  
12 child, any of the following:

13 (a) The child, if 12 years of age or over, the child's guardian ad litem, and the  
14 child's counsel.

15 (b) The guardian.

16 (c) The parents of the child.

17 (d) The county of venue, through the person representing the interests of the  
18 public under s. 48.09, if the county has an interest in the guardianship.

19 (e) If the child is an Indian child, the Indian child's tribe.

20 (f) Any other person that the court may require.

Insert  
17-20

21 (2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY. (a) *Appointment*. 1. This  
22 section may be used for the appointment of a guardian of the person for a child. An  
23 appointment of a guardian of the estate of a child shall be conducted under the  
24 procedures specified in ch. 54. This section does not prohibit a person from

Insert 17-24

**SENATE BILL 706****SECTION 22**

1 petitioning a court under s. 48.831, 48.977, or 48.978 for the appointment of a  
2 guardian of the person of a child.

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

7 (b) *Nomination by parent or child.* 1. A parent may nominate a guardian and  
8 successor guardian for any of his or her children who is in need of guardianship,  
9 including a nomination by will. Subject to the rights of a surviving parent, the court  
10 shall appoint the person nominated as guardian or successor guardian, unless the  
11 court finds that appointment of the person nominated is not in the child's best  
12 interests.

13 2. A child who is 12 years of age or over may nominate his or her own guardian,  
14 but if the child is in the armed service or is outside of the state or if other good reason  
15 exists, the court may dispense with the child's right of nomination. If neither parent  
16 of a child who is 12 years of age or over is fit, willing, and able to be appointed  
17 guardian, the court may appoint the nominee of the child.

18 3. In determining who is appointed as guardian, the court shall consider the  
19 nominations of the parents and child and the opinions of the parents and child as to  
20 what is in the best interests of the child, but the best interests of the child as  
21 determined by the court shall control in making the determination when those  
22 nominations and opinions are in conflict with those best interests.

23 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.  
24 5., a guardian appointed under sub. (3) (f) 2. shall have all of the duties and authority

**SENATE BILL 706**

✓

1 specified in s. 48.023, unless those duties and that authority are limited under subd.  
2 2.

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

14 3. 'Temporary guardianship.' If it is demonstrated to the court that a child's  
15 particular situation, including the inability of the child's parent to provide for the  
16 care, custody, and control of the child for a temporary period of time, requires the  
17 appointment of a temporary guardian, the court may appoint a temporary guardian  
18 as provided under sub. (4).

19 4. 'Emergency guardianship.' If it is demonstrated to the court that the welfare  
20 of a child requires the immediate appointment of an emergency guardian, the court  
21 may appoint an emergency guardian as provided under sub. (5).

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

## SENATE BILL 706

## SECTION 22

1 by statute or court order. The court may authorize a guardian to exercise only those  
2 powers that are necessary to provide for the care, custody, and control of the child and  
3 to exercise those powers in a manner that is appropriate to the child.

4 (3) PROCEDURES. (a) *Petition*. Any person, including a child 12 years of age or  
5 over on his or her own behalf, may petition for the appointment of a guardian for a  
6 child. A petition for guardianship may include an application for protective  
7 placement or protective services or both under ch. 55. The petition shall be entitled  
8 “In the interest of .... (child’s name), a person under the age of 18” and shall state all  
9 of the following, if known to the petitioner:

10 1. The name, date of birth, and address of the child. *the petitioner*

11 2. The names and addresses of the child’s parents, current guardian and legal  
12 custodian, if any, *the* proposed guardian, *any proposed successor guardians,* and all other interested persons.

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

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

19 5. If the petitioner is requesting a limited guardianship, the facts and  
20 circumstances establishing that the child’s parents need assistance in providing for  
21 the care, custody, and control of the child and a statement of the specific duties and  
22 authority under s. 48.023 sought by the petitioner for the proposed guardian and the  
23 specific parental rights and duties that the petitioner seeks to have transferred.

24 6. If the petitioner is requesting a temporary guardianship, the facts and  
25 circumstances establishing that the child’s particular situation, including the

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1 inability of the child's parents to provide for the care, custody, and control of the child  
2 for a temporary period of time, requires the appointment of a temporary guardian;  
3 the reasons for the appointment of a temporary guardian; and the powers requested  
4 for the temporary guardian.

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

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

10 9. Whether the proceedings are subject to the Uniform Child Custody  
11 Jurisdiction and Enforcement Act under ch. 822. ✓

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

16 11. If the petitioner knows or has reason to know that the child is an Indian  
17 child, reliable and credible information showing that continued custody of the child  
18 by the child's parent or Indian custodian is likely to result in serious emotional or  
19 physical damage to the child under s. 48.028 (4) (d) 1. and that active efforts under  
20 s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family  
21 and that those efforts have proved unsuccessful. Insert 21-21

22 12. Whether the petitioner is aware of any guardianship or other related  
23 proceeding involving the child that is pending in another state or county and, if so,  
the details of the guardianship or related proceeding.

Insert 24  
21-24

**SENATE BILL 706****SECTION 22**

1           (b) *Service of petition and notice.* 1. Except as provided in subd. 3., the  
2 petitioner shall cause the petition and notice of the time and place of the hearing  
3 under par. (d) to be served at least 10 days before the time of the hearing upon all  
4 interested persons, unless notice is specifically waived by an interested person or by  
5 the court for good cause shown.

6           2. A notice shall be in writing. A copy of the petition and any other required  
7 document shall be attached to the notice. Except as provided in subd. 3., notice shall  
8 be delivered in person or by 1st class mail. Notice is considered to be given by proof  
9 of personal delivery, by proof that the notice was mailed to the last-known address  
10 of the recipient, or, if the recipient is an adult, by the written admission of service of  
11 the person served.

12           3. If the petitioner knows or has reason to know that the child is an Indian child,  
13 notice to the Indian child's parent, Indian custodian, and Indian tribe shall be  
14 provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under  
15 par. (d) until at least 10 days after receipt of the notice by the Indian child's parent,  
16 Indian custodian, and Indian tribe or, if the identity or location of the Indian child's  
17 parent, Indian custodian, or tribe cannot be determined, until at least 15 days after  
18 receipt of the notice by the U.S. secretary of the interior. On request of the Indian  
19 child's parent, Indian custodian, or Indian tribe, the court shall grant a continuance  
20 of up to 20 additional days to enable the requester to prepare for the hearing.

21           (c) *Statement by proposed guardian.* 1. At least 96 hours before the hearing  
22 under par. (d), the proposed guardian shall submit to the court a sworn and notarized  
23 statement as to the number of persons for whom the proposed guardian is  
24 responsible, whether as a parent, guardian, or legal custodian, as to the proposed  
25 guardian's income, assets, debts, and living expenses, and as to whether the

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1 proposed guardian is currently charged with or has been convicted of a crime or has  
2 been determined under s. 48.981 (3) (c) to have abused or neglected a child.

3 2. If subd. 1. applies to the proposed guardian, he or she shall include in the  
4 sworn and notarized statement a description of the circumstances surrounding the  
5 applicable event under subd. 1.

45

6 (d) *Hearing.* 1. The initial hearing on a petition for guardianship, other than  
7 a petition for emergency guardianship under sub. (5), shall be heard within 30 days  
8 after the filing of the petition. At the hearing the court shall first determine whether  
9 any party wishes to contest the petition. If the petition is not contested, the court  
10 shall immediately proceed to a fact-finding and dispositional hearing, unless an  
11 adjournment is requested. If the petition is contested or if an adjournment is  
12 requested, the court shall set a date for a fact-finding and dispositional hearing that  
13 allows reasonable time for the parties to prepare but is not more than 30 days after  
14 the initial hearing. The court shall hold the fact-finding and dispositional hearing  
15 at the time specified or set by the court under this subdivision, at which any  
16 interested person described in subd. 3 may present evidence, including expert  
17 testimony, and argument relating to the allegations in the petition.

party

18 2. If the petition is contested, on the request of any interested person or on the  
19 court's own motion, the court may order the county department, a licensed child  
20 welfare agency, or, in a county having a population of 750,000 or more, the  
21 department or an agency under contract with the department to conduct an  
22 investigation to determine whether the child is a proper subject for guardianship and  
23 whether the proposed guardian's home is suitable for the child. The person  
24 conducting the investigation shall file a report of its investigation with the court at  
25 least 96 hours before the fact-finding and dispositional hearing. The parents of the

750,000

such

any party

any party may request for the court may propose on its own motion, that an investigation be conducted to determine whether the child is a proper subject for guardianship and whether the proposed guardian's home is suitable for the child. If the court determines that such an investigation is necessary and that the welfare of the child

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successor

1 child and the proposed guardian shall reimburse the person conducting the  
2 investigation for the cost of the investigation according to a fee schedule established  
3 by the department based on ability to pay.

4 3. The proposed guardian and any proposed ~~standby~~ guardian shall be  
5 physically present at the hearing unless the court excuses the attendance of either  
6 or, for good cause shown, permits attendance by telephone. The child is not required  
7 to attend the hearing, but if the child has nominated the proposed guardian, the child  
8 shall provide to his or her guardian ad litem sufficient information for the guardian  
9 ad litem to advise the court whether the nomination is in the best interests of the  
10 child.

~~An interested person may participate in the hearing on the petition if the court  
determines that the interested person is a necessary party under s. 803.03.~~

Insert  
24-11

12 (e) *Dispositional factors.* In determining the appropriate disposition under this  
13 section, the court shall consider all of the following:

14 1. Any nominations made under sub. (2) (b) 1. or 2. and the opinions of the  
15 parents and child as to what is in the best interests of the child, but the best interests  
16 of the child as determined by the court shall control in making the determination  
17 when those nominations and opinions are in conflict with those best interests.

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

20 3. If the child is an Indian child, the order of placement preference under s.  
21 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as  
22 described in s. 48.028 (7) (e), for departing from that order.

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



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1 (f) *Disposition.* At the conclusion of the hearing under par. (d), the court shall  
2 grant one of the following dispositions:

3 1. A disposition dismissing the petition if the court finds that the petitioner has  
4 not proved the allegations in the petition by clear and convincing evidence or  
5 determines that appointment of the proposed guardian as the child's guardian is not  
6 in the best interests of the child.

↑ which rules the court shall determine in accordance with the factors specified in s. 767.41(5) as applicable

7 2. A disposition ordering that the proposed guardian be appointed as the child's  
8 full guardian under sub. (2) (c) 1., limited guardian under sub. (2) (c) 2., or temporary  
9 guardian under sub. (2) (c) 3., if the court finds that the petitioner has proved the

10 allegations in the petition by clear and convincing evidence and determines that such  
11 an appointment is in the best interests of the child. Insert 25-11 The disposition may also

12 designate an amount of support to be paid by the child's parents and, subject to sub.

13 (12), may include reasonable rules of parental visitation. If the court orders the

14 proposed guardian to be appointed as the child's guardian, the court shall issue

15 letters of guardianship to the guardian.

16 (4) TEMPORARY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court

17 may appoint a temporary guardian for a child for a period not to exceed 180 days,

18 except that the court may extend this period for good cause shown for one additional

19 180-day period. The court's determination and order appointing the temporary

20 guardian shall specify the authority of the temporary guardian, which shall be

21 limited to those acts that are reasonably related to the reasons for the appointment

22 that are specified in the petition for temporary guardianship. The authority of the

23 temporary guardian is limited to the performance of those acts stated in the order

24 of appointment.

**SENATE BILL 706****SECTION 22**

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

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

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

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

18           1. Any person may petition for the appointment of an emergency guardian for  
19 a child. The petition shall contain the information required under sub. (3) (a) and  
20 shall specify the reasons for the appointment of an emergency guardian and the  
21 powers requested for the emergency guardian.

22           2. The petitioner shall give notice of the petition and of the time and place of  
23 the hearing under subd. 4. to the child, if 12 years of age or over, the child's guardian  
24 ad litem, and the child's counsel, if any; the child's parents, guardian, and legal  
25 custodian; and the person nominated as emergency guardian. The notice and a copy

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1 of the petition shall be served as soon after the filing of the petition as possible, shall  
2 be served by the most practical means possible, including personal service or service  
3 by electronic mail or telephone, and shall include notice of the right to request the  
4 appointment of counsel or to retain counsel of the party's own choosing and of the  
5 right to petition for reconsideration or modification of the emergency guardianship  
6 under subd. 5. If the petitioner serves notice of the hearing after the hearing is  
7 conducted and the court has entered an order, the petitioner shall include the court's  
8 order with the notice of the hearing.

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

18 4. The court shall hold a hearing on the emergency guardianship petition as  
19 soon as possible after the filing of the petition or, for good cause shown, may issue a  
20 temporary order appointing an emergency guardian without a hearing which shall  
21 remain in effect until a hearing is held on the emergency guardianship petition. If  
22 appointed prior to the hearing, the guardian ad litem shall attend the hearing in  
23 person or by telephone.

24 5. If the court appoints an emergency guardian, any person specified in subd.  
25 2. may petition for reconsideration or modification of the emergency guardianship

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SECTION 22

1 and the court shall hold a rehearing on the issue of appointment of the emergency  
2 guardian within 30 calendar days after the filing of the petition.

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

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

13 (6) STANDBY GUARDIANSHIP. ~~(a) Petition.~~ <sup>stays</sup> (A) person may at any time bring a  
14 ~~petition for the appointment of a standby guardian of a child, except that, as specified~~  
15 ~~in s. 48.978,~~ a petition for the appointment of a standby guardian of the person ~~or~~  
16 ~~estate or both~~ of a child to assume the duty and authority of guardianship on the  
17 incapacity, death, or debilitation and consent, of the child's parent ~~may~~ <sup>shall</sup> be brought  
under s. 48.978. ~~(1) (a) SUCCESSION GUARDIANSHIP. (a)~~

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19 ~~(b) Appointment. At any hearing conducted under this subsection the court~~  
20 may designate one or more ~~standby~~ <sup>successor</sup> guardians whose appointment shall become  
21 effective immediately upon the death, unwillingness or inability to act, resignation,  
22 or removal by the court of the initially appointed guardian or during a period, as  
23 determined by the initially appointed guardian, when the initially appointed  
24 guardian is temporarily unable to fulfill his or her duties, including during an  
25 extended vacation or illness. The powers and duties of the ~~standby~~ <sup>successor</sup> guardian shall

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1 be the same as those of the initially appointed guardian. The ~~standby~~<sup>Successor</sup> guardian shall  
 2 receive a copy of the court order establishing or modifying the initial guardianship  
 3 and of the order designating the ~~standby~~<sup>Successor</sup> guardian. Upon assuming office, the  
 4 ~~standby~~<sup>Successor</sup> guardian shall so notify the court. Upon notification, the court shall issue  
 5 new letters of guardianship that specify that the ~~standby~~<sup>Successor</sup> guardianship is permanent  
 6 or that specify the time period for a temporary ~~standby~~<sup>Successor</sup> guardianship. <sup>I</sup>

~~(7) SUCCESSOR GUARDIAN. (a) Appointment. If a guardian dies, is removed by~~  
~~(b) Appointment, when no guardian. 1.~~

7 If a guardian dies, is removed by  
 8 order of the court, or resigns and the resignation is accepted by the court, the court,  
 9 on its own motion or upon petition of any interested person, may appoint a competent  
 10 and suitable person as successor guardian. The court may, upon request of any  
 11 interested person or on its own motion, direct that the petition or motion for the  
 12 appointment of a successor guardian be heard in the same manner and subject to the  
 13 same requirements as provided under this section for an original appointment of a  
 14 guardian.

15 ~~(b) Notice~~<sup>2.</sup> If the appointment under par. ~~(a)~~<sup>subd. 1.</sup> is made without hearing, the  
 16 successor guardian shall provide notice to all interested persons of the appointment,  
 17 the right to request the appointment of counsel or to retain counsel of the interested  
 18 person's own choosing, and the right to petition for reconsideration of the  
 19 appointment of the successor guardian. The notice shall be served personally or by  
 20 mail not later than 10 days after the appointment.

21 (8) MODIFICATION OF GUARDIANSHIP ORDER. (a) Any interested person or other  
 22 person approved by the court may request a modification of a guardianship order  
 23 entered under this subsection or sub. (3) (f) 2. or the court may, on its own motion,  
 24 propose such a modification. The request or motion shall set forth in detail the  
 25 nature of the proposed modification, shall allege facts sufficient to show that there

**SENATE BILL 706****SECTION 22**

1 has been a substantial change in circumstances since the last order affecting the  
2 guardianship was entered and that the proposed modification would be in the best  
3 interests of the child, and shall allege any other information that affects the  
4 advisability of the court's disposition.

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

10 (c) If a hearing is to be held, the court shall notify all interested persons at least  
11 7 days prior to the hearing of the date, place, and purpose of the hearing. A copy of  
12 the request or proposal shall be attached to the notice. The court may order a  
13 modification if, at the hearing, the court finds that the person proposing the  
14 modification has proved by clear and convincing evidence that there has been a  
15 substantial change in circumstances and determines that a modification would be  
16 in the best interests of the child.

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

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

22 1. Abuses or neglects the child or knowingly permits others to do so.

23 2. Fails to disclose information specified in sub. (3) (c) that would have  
24 prevented appointment of the person as guardian.

**SENATE BILL 706**

1           3. Otherwise fails to perform any of his or her duties as a guardian under s.  
2 48.023.

3           (c) *Procedure.* Any interested person or other person approved by the court may  
4 file a petition requesting a review of the conduct of a guardian or the court, on its own  
5 motion, may propose such a review. The request or motion shall allege facts  
6 sufficient to show cause under par. (b) for the court to impose a remedy under par.  
7 (d). The court shall hold a hearing on the request or motion not more than 30 days  
8 after the filing of the request or proposal. Not less than 7 days before the date of the  
9 hearing, the court shall cause notice of the hearing to be provided to the child, his or  
10 her or parents, the guardian, and any other persons as determined by the court. A  
11 copy of the request or motion shall be attached to the notice.

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

- 15           1. Remove the guardian.
- 16           2. Remove the guardian and appoint a successor guardian.
- 17           3. Enter any other order that may be necessary or appropriate to compel the  
18 guardian to carry out the guardian's duties, including an order setting reasonable  
19 rules of visitation with the child.
- 20           4. Modify the duties and authority of the guardian.
- 21           5. Require the guardian to pay any costs of the proceeding, including costs of  
22 service and attorney fees, if the court finds that the guardian's conduct was  
23 egregious.

1           **(10)** TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* A guardianship  
2 under this section shall continue until the child attains the age of 18 years unless any  
3 of the following occurs:

4           1. The guardianship is for a lesser period of time and that time has expired.

5           2. The child marries.

6           3. The child dies.

7           4. The child's residence changes from this state to another state and a guardian  
8 is appointed in the new state of residence.

9           5. The guardian dies, or resigns and the resignation is accepted by the court,  
10 and a successor guardian is not appointed.

11           6. The guardian is removed for cause under sub. (9) (d) 1. and a successor  
12 guardian is not appointed.

13           7. The court terminates the guardianship on the request of a parent of the child  
14 under par. (b).

15           (b) *Termination on request of parent.* 1. A parent of the child may file a petition  
16 requesting that a guardianship order entered under sub. (3) (f) 2. (4), (5), or (6) be  
17 terminated. The petition shall allege facts sufficient to show that there has been a  
18 substantial change in circumstances since the last order affecting the guardianship  
19 was entered, that the parent is fit, willing, and able to carry out the duties of a  
20 guardian, and that termination of the guardianship would be in the best interests  
21 of the child.

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



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1           3. If a hearing is to be held, by no less than 7 days before the date of the hearing  
2 the court shall cause notice of the hearing to be provided to the child, his or her  
3 parents, the guardian, and any other persons as determined by the court. A copy of  
4 the request or proposal shall be attached to the notice. The court shall terminate the  
5 guardianship if the court finds that the parent has proved by clear and convincing  
6 evidence that he or she has remedied the unfitness, unwillingness, or inability to  
7 provide for the care, custody, and control of the child or other compelling facts and  
8 circumstances on which the guardianship was granted and that he or she is now fit,  
9 willing, and able to carry out the duties of a guardian and the court determines that  
10 termination of the guardianship would be in the best interests of the child.

11           **SECTION 23.** 48.977 (2) (a) of the statutes is amended to read:

12           48.977 (2) (a) That the child has been adjudged to be in need of protection or  
13 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or  
14 (11m) or 938.13 (4) or (12), or has been adjudged delinquent under s. 938.12, and been  
15 placed, or continued in a placement, outside of his or her home pursuant to one or  
16 more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.34, 938.345, 938.357,  
17 938.363, or 938.365 ~~or~~, that the child has been so adjudged and placement of the child  
18 in the home of a guardian under this section has been recommended under s. 48.33  
19 (1) or 938.33 (1), or that the child has had a guardian of the person appointed for him  
20 or her under ch. 54, 200<sup>9</sup> stats., or ch. 880, 2003 stats., and is placed in the home of  
21 the guardian.

22           **SECTION 24.** 48.977 (2) (e) of the statutes is amended to read:

23           48.977 (2) (e) That the child's parent is neglecting, refusing, or unable to carry  
24 out the duties of a guardian or is not meeting the conditions established in the court  
25 order described in par. (a) for the safe return of the child to the home or, if the child

**SENATE BILL 706****SECTION 24**

1 has 2 parents, both parents are neglecting, refusing or unable to carry out the duties  
2 of a guardian those duties or are not meeting those conditions.

3 **SECTION 25.** 48.977 (2) (f) of the statutes is amended to read:

4 48.977 (2) (f) That the agency primarily responsible for providing services to  
5 the child under a court order has made reasonable efforts to make it possible for the  
6 child to return to his or her home, while assuring that the child's health and safety  
7 are the paramount concerns, but that reunification of the child with the child's  
8 parent or parents is unlikely or contrary to the best interests of the child and that  
9 further reunification efforts are unlikely to be made or are contrary to the best  
10 interests of the child or that the agency primarily responsible for providing services  
11 to the child under a court order has made reasonable efforts to prevent the removal  
12 of the child from his or her home, while assuring the child's health and safety, but that  
13 continued placement of the child in the home would be contrary to the welfare of the  
14 child, except that the court is not required to find that the agency has made those  
15 reasonable efforts with respect to a parent of the child if any of the circumstances  
16 specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the  
17 findings specified in this paragraph on a case-by-case basis based on circumstances  
18 specific to the child and shall document or reference the specific information on  
19 which those findings are based in the guardianship order. A guardianship order that  
20 merely references this paragraph without documenting or referencing that specific  
21 information in the order or an amended guardianship order that retroactively  
22 corrects an earlier guardianship order that does not comply with this paragraph is  
23 not sufficient to comply with this paragraph. This paragraph does not apply to a  
24 child who is placed in the home of a guardian under ch. 54, 200<sup>9</sup> stats., or ch. 880,  
25 2003 stats., and who is not receiving services from an agency under a court order.

## SENATE BILL 706

1 SECTION 26. 48.977 (4) (b) 3. of the statutes is amended to read:

2 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection  
3 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or  
4 (11m) or 938.13 (4) or (12), or was adjudicated delinquent under s. 938.12, and the  
5 dates on which the child has been placed, or continued in a placement, outside of his  
6 or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,  
7 48.365, 938.34, 938.345, 938.357, 938.363, or 938.365; or, if the child has been so  
8 adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1) in  
9 which placement of the child in the home of the person is recommended; or, if the  
10 child has had a guardian of the person appointed for him or her under ch. 54, 2001  
11 stats., or ch. 880, 2003 stats., the date on which the child was placed in the home of  
12 the guardian.

13 SECTION 27. 48.977 (4) (b) 6. of the statutes ~~as affected by 2009 Wisconsin Act~~  
14 04, is amended to read:

15 48.977 (4) (b) 6. A statement of whether the child may be subject to s. 48.028  
16 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may  
17 be subject to s. 48.028 or that act, the names and addresses of the child's Indian  
18 custodian, if any, and Indian tribe, if known.

19 SECTION 28. 48.977 (4) (c) 2. of the statutes ~~as affected by 2009 Wisconsin Act~~  
20 04, is amended to read:

21 48.977 (4) (c) 2. Except as provided in subd. 2m., service shall be made by 1st  
22 class mail at least 7 days before the hearing or by personal service at least 7 days  
23 before the hearing ~~or, if with reasonable diligence a party specified in subd. 1. cannot~~  
24 ~~be served by mail or personal service, service shall be made by publication of a notice~~  
25 ~~published as a class 1 notice under ch. 985. In determining which newspaper is likely~~

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1 to give notice as required under s. 985.02 (1), the petitioner shall consider the  
2 residence of the party, if known, or the residence of the relatives of the party, if  
3 known, or the last known location of the party. Service is considered to be made by  
4 proof that the petition and notice under subd. 1. were mailed to the last-known  
5 address of the recipient, by proof of personal delivery of that petition and notice, or  
6 if the recipient is an adult, by the written admission of service of the person served.

SECTION 29. 48.977 (4) (i) of the statutes is amended to read:

8 48.977 (4) (i) *Effect of disposition on permanency plan review process.* After a  
9 disposition under par. (h), the child's permanency plan shall continue to be reviewed  
10 under s. 48.38 (5) or 938.38 (5), if applicable required under s. 48.38 (2) or 938.38 (2).

SECTION 30. 48.977 (8) of the statutes is amended to read:

12 48.977 (8) RELATIONSHIP TO ~~CH. 54 AND CH. 880, 2003~~ STATS OTHER GUARDIANSHIP  
13 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian  
14 appointed under s. 48.976, ch. 54, 2007 stats., or ch. 880, 2003 stats.

15 (b) Nothing in this section prohibits an individual from petitioning a court  
16 under ~~ch. 54~~ s. 48.976 for appointment of a guardian.

SECTION 31. 48.978 (2) (b) 11. of the statutes ~~as affected by 2009 Wisconsin Act~~  
18 94 is amended to read:

19 48.978 (2) (b) 11. A statement of whether the child may be subject to s. 48.028  
20 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may  
21 be subject to s. 48.028 or that act, the names and addresses of the child's Indian  
22 custodian, if any, and Indian tribe, if known.

SECTION 32. 48.978 (7) of the statutes is amended to read:

24 48.978 (7) RELATIONSHIP TO ~~CH. 54~~ OTHER GUARDIANSHIP PROCEDURES. (a) Except  
25 when a different right, remedy, or procedure is provided under this section, the

Insert  
36-6  
7

14

Insert  
16  
36-16  
17

Insert  
22  
36-22  
23

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1 rights, remedies, and procedures provided in s. 48.976 or ch. 54, whichever is  
2 applicable, shall govern a standby guardianship created under this section.

3 (b) This section does not abridge the duties or authority of a guardian appointed  
4 under s. 48.976, ch. 880, 2003 stats., or ch. 54.

5 (c) Nothing in this section prohibits an individual from petitioning a court for  
6 the appointment of a guardian of the person under s. 48.976 or a guardian of the  
7 estate under ch. 54.

8 SECTION 33. 48.979 of the statutes is created to read:

9 **48.979 Delegation of power by parent, guardian or legal custodian.** A  
10 parent, guardian, or legal custodian of a child, by a properly executed power of  
11 attorney, may delegate to ~~another person~~ <sup>an adult relative of the child</sup>, for a period not to exceed one year, any of  
12 his or her ~~power~~ <sup>authority</sup> regarding the care and custody of the child, except the ~~power~~ <sup>authority</sup> to  
13 consent to the marriage or adoption of the child, <sup>for the enlistment of the child in the U.S. armed forces</sup>

14 SECTION 34. 49.32 (1) (am) of the statutes is amended to read:

15 49.32 (1) (am) Paragraph (a) does not prevent the department or a county  
16 department under s. 46.22 or 46.23 from charging and collecting the cost of adoptive  
17 placement investigations and child care as authorized under s. 48.837 (7) or the cost  
18 of guardianship investigations as authorized under s. 48.976 (3) (d) 2. ✓

19 SECTION 35. 51.30 (4) (b) 18. a. of the statutes is amended to read:

20 51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62  
21 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the  
22 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a  
23 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
24 or for whom a guardian is appointed under, ~~or~~ s. 48.976 or 54.10 or s. 880.33, 2003  
25 stats.

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**SENATE BILL 706****SECTION 36**

1           **SECTION 36.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

2           51.30 **(4)** (b) 18. c. If the patient, regardless of age, has a guardian appointed  
3 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
4 developmental disability who has a parent or has a guardian appointed under s.  
5 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33,  
6 2003 stats., information concerning the patient that is obtainable by staff members  
7 of the agency or nonprofit corporation with which the agency has contracted is  
8 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,  
9 if any; the name, birth date and county of residence of the patient; information  
10 regarding whether the patient was voluntarily admitted, involuntarily committed  
11 or protectively placed and the date and place of admission, placement or  
12 commitment; and the name, address and telephone number of the guardian of the  
13 patient and the date and place of the guardian's appointment or, if the patient is a  
14 minor with developmental disability who has a parent or has a guardian appointed  
15 under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or  
16 s. 880.33, 2003 stats., the name, address and telephone number of the parent or  
17 guardian appointed under s. 48.831 of the patient.

18           **SECTION 37.** 54.01 (10) of the statutes is amended to read:

19           54.01 **(10)** "Guardian" means a person appointed by a court under s. 54.10 to  
20 manage the income and assets and provide for the essential requirements for health  
21 and safety and the personal needs of ~~a minor~~, an individual found incompetent, or  
22 a spendthrift or to manage the income and assets of a minor.

23           **SECTION 38.** 54.10 (1) of the statutes is amended to read:

24           54.10 **(1)** A court may appoint ~~a guardian of the person or a guardian of the~~  
25 estate, ~~or both~~, for an individual if the court determines that the individual is a

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1 minor. Except as provided in ss. 48.831, 48.977, and 48.978, an appointment of a  
 2 guardian of the person of a minor shall be conducted under the procedures specified  
 3 in s. 48.976.

4 SECTION 39. 54.52 (1) of the statutes is amended to read:

5 54.52 (1) A person may at any time bring a petition for the appointment of a  
 6 standby guardian of the person or estate of an individual who is determined under  
 7 s. 54.10 to be incompetent, ~~a minor~~, or a spendthrift or for the appointment of a  
 8 standby guardian of the estate of a minor, except that, as specified in s. ~~48.97~~ 48.978,  
 9 a petition for the appointment of a standby guardian of the person or ~~property~~ estate,  
 10 or both, of a minor to assume the duty and authority of guardianship on the  
 11 incapacity, death, or debilitation and consent, of the minor's parent ~~may~~ <sup>shall</sup> be brought  
 12 under s. 48.978. ~~may~~ <sup>strike</sup>

13 SECTION 40. 54.56 of the statutes is renumbered 48.976 (11) and amended to  
 14 read:

15 48.976 (11) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS. (a)  
 16 In this ~~section~~ subsection, "stepparent" means the surviving spouse of a deceased  
 17 parent of a ~~minor~~ child, whether or not the surviving spouse has remarried.

18 (b) If one or both parents of a ~~minor~~ child are deceased and the ~~minor~~ child is  
 19 in the custody of the surviving parent or any other person, a grandparent or  
 20 stepparent of the ~~minor~~ child may petition for visitation privileges with respect to the  
 21 ~~minor~~ child, whether or not the person with custody is married. The grandparent  
 22 or stepparent may file the petition in a guardianship or temporary guardianship  
 23 proceeding under this ~~chapter~~ section that affects the ~~minor~~ child or may file the  
 24 petition to commence an independent action under this ~~chapter~~ subsection. Except  
 25 as provided in ~~sub. (3m)~~ par. (cm), the court may grant reasonable visitation

**SENATE BILL 706****SECTION 40**

1 privileges to the grandparent or stepparent if the surviving parent or other person  
2 who has custody of the ~~minor~~ child has notice of the hearing and if the court  
3 determines that visitation is in the best interest of the ~~minor~~ child.

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

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

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

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

19 (dm) 1. If a grandparent or stepparent granted visitation privileges with  
20 respect to a ~~minor~~ child under this ~~section~~ subsection is convicted under s. 940.01 of  
21 the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree  
22 intentional homicide, of a parent of the ~~minor~~ child, and the conviction has not been  
23 reversed, set aside, or vacated, the court shall modify the visitation order by denying  
24 visitation with the ~~minor~~ child upon petition, motion, or order to show cause by a



## SENATE BILL 706

1 person having custody of the ~~minor~~ child, or upon the court's own motion, and upon  
2 notice to the grandparent or stepparent granted visitation privileges.

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

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

10 **SECTION 41.** 54.57 of the statutes is renumbered 48.976 (12) and amended to  
11 read:

12 48.976 (12) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF ~~A~~ PARENT KILLS  
13 OTHER PARENT. (a) Except as provided in ~~sub. (2)~~, ~~in an action under this chapter that~~  
14 ~~affects a minor~~ par. (b), a court may not grant to a parent of the ~~minor~~ a child who  
15 is the subject of a proceeding under this section visitation or physical placement  
16 rights with the ~~minor~~ child if the parent has been convicted under s. 940.01 of the  
17 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional  
18 homicide, of the ~~minor's~~ child's other parent, and the conviction has not been  
19 reversed, set aside, or vacated.

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

24 **SECTION 42.** 55.03 (1) of the statutes is amended to read:

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SECTION 42

1           55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting  
 2 as a guardian appointed under s. 48.976, ch. 880, 2003 stats., or ch. 54, 200<sup>9</sup> stats.,  
 3 may be a provider of protective services or protective placement for its ward under  
 4 this chapter.

5           **SECTION 43.** 55.10 (4) (intro.) of the statutes is amended to read:

6           55.10 (4) RIGHTS. (intro.) Sections 54.42, 54.44, and 54.46 and the following  
 7 provisions apply to all hearings under this chapter involving protective placement  
 8 or protective services for an adult, and ~~s. 48.976 and~~ the following provisions apply  
 9 to all hearings under this chapter involving protective placement or protective  
 10 services for a minor, except transfers of placement under s. 55.15 and summary  
 11 hearings under ss. 55.18 (3) (d) and 55.19 (3) (d):

12           **SECTION 44.** 55.10 (4) (a) of the statutes is amended to read:

13           55.10 (4) (a) *Counsel.* The individual sought to be protected has the right to  
 14 counsel whether or not the individual is present at the hearing on the petition. The  
 15 court shall require representation by full legal counsel whenever the petition alleges  
 16 that the individual is not competent to refuse psychotropic medication under s. 55.14,  
 17 the individual sought to be protected requested such representation at least 72 hours  
 18 before the hearing, the guardian ad litem or any other person states that the  
 19 individual sought to be protected is opposed to the petition, or the court determines  
 20 that the interests of justice require it. If the individual sought to be protected or any  
 21 other person on his or her behalf requests but is unable to obtain legal counsel, the  
 22 court shall refer the individual to the state public defender as provided under s.  
 23 55.105 for appointment of legal counsel. If the individual sought to be protected is  
 24 represented by counsel appointed under s. 977.08 in a proceeding for the  
 25 appointment of a guardian under s. 48.976 or ch. 54, the court shall order the counsel

INS  
42-4

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Handwritten notes in a box: "ALIAS 43-7" and "2" with arrows pointing to lines 1 and 2.

~~appointed under s. 977.08 to represent under this section the individual sought to be protected.~~

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SECTION 45. 115.76 (12) (b) 2. of the statutes is amended to read:

115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was made a ward of the state, county, or child welfare agency under ch. 54, 2007 <sup>9</sup> stats., or ch. 880, 2003 stats., or if a child has been placed in the legal custody or guardianship of the state, county, or child welfare agency under ch. 48 or ~~ch. 767~~.

Handwritten note in a box: "Insert 43-7" with an arrow pointing to line 6.

SECTION 46. 146.82 (2) (a) 9. a. of the statutes is amended to read:

146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 48.976 or 54.10 or s. 880.33, 2003 stats.

SECTION 47. 146.82 (2) (a) 9. c. of the statutes is amended to read:

146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the

**SENATE BILL 706****SECTION 47**

1 guardian of the patient and the date and place of the guardian's appointment or, if  
2 the patient is a minor with developmental disability who has a parent or has a  
3 guardian appointed under s. 48.831 and does not have a guardian appointed under  
4 s. 48.976 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number  
5 of the parent or guardian appointed under s. 48.831 of the patient.

6 **SECTION 48.** 214.37 (4) (k) 1. of the statutes is amended to read:

7 214.37 **(4)** (k) 1. An affidavit stating that the person has standing under s.  
8 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment  
9 of a decedent's estate or that the person is an heir of the decedent, or was guardian,  
10 as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the decedent  
11 at the time of the decedent's death, and may obtain transfer of property of a decedent  
12 under s. 867.03.

13 **SECTION 49.** 215.26 (8) (e) 1. of the statutes is amended to read:

14 215.26 **(8)** (e) 1. Submits an affidavit stating that the person has standing  
15 under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or  
16 assignment of a decedent's estate or that the person is an heir of the decedent, or was  
17 guardian, as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the  
18 decedent at the time of the decedent's death, and may obtain transfer of property of  
19 a decedent under s. 867.03; and

20 **SECTION 50.** 757.69 (1m) (e) of the statutes is amended to read:

21 757.69 **(1m)** (e) Conduct hearings, make findings, or issue orders in  
22 proceedings under s. 48.976, 48.977, or 48.978.

23 **SECTION 51.** 808.075 (4) (a) 9m. of the statutes is created to read:

24 808.075 **(4)** (a) 9m. Review of the conduct of a guardian under s. 48.976 (9). ✓

25 **SECTION 52.** 808.075 (4) (a) 11. of the statutes is amended to read:

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1 808.075 (4) (a) 11. Termination of guardianship under s. 48.976 (10) or 48.977  
2 (7), including removal of a guardian.

3 SECTION 53. 808.075 (4) (a) 13. of the statutes is created to read:

4 808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.976 (7).

5 SECTION 54. 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14.  
6 and amended to read:

7 808.075 (4) (a) 14. Order for visitation under s. ~~54.56~~ 48.976 (11).

8 SECTION 55. 814.66 (1) (m) of the statutes is amended to read:

9 814.66 (1) (m) For filing a petition under s. ~~54.56~~ 48.976 (11), whether in a  
10 guardianship or temporary guardianship proceeding or to commence an  
11 independent action, \$60.

12 SECTION 56. 938.02 (8) of the statutes is amended to read:

13 938.02 (8) "Guardian" means the person named by the court having the duty  
14 and authority of guardianship guardian of the person of a juvenile.

15 SECTION 57. 938.255 (1) (cm) of the statutes ~~as affected by 2009 Wisconsin Act~~

16 94, is amended to read:

17 938.255 (1) (cm) If the petition is initiating proceedings under s. 938.13 (4), (6),  
18 (6m), or (7), whether the juvenile may be subject to s. 938.028 or the federal Indian  
19 Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to s.  
20 938.028 or that act, the names and addresses of the juvenile's Indian custodian, if  
21 any, and Indian tribe, if known.

22 SECTION 58. 938.34 (3) (a) of the statutes is amended to read:

23 938.34 (3) (a) The home of a parent ~~or~~, other relative, or guardian of the  
24 juvenile, except that the court may not designate the home of a parent ~~or~~, other  
25 relative, or guardian of the juvenile as the juvenile's placement if the parent ~~or~~, other

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## SECTION 58

1 relative, or guardian has been convicted of the homicide of a parent of the juvenile  
2 under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or  
3 vacated, unless the court determines by clear and convincing evidence that the  
4 placement would be in the best interests of the juvenile. The court shall consider the  
5 wishes of the juvenile in making that determination.

6 SECTION 59. 938.34 (3) (c) of the statutes is amended to read:

7 938.34 (3) (c) A foster home ~~or treatment foster home~~ licensed under s. 48.62  
8 ~~or~~ a group home licensed under s. 48.625, or the home of a guardian under s. 48.977  
9 (2).

10 SECTION 60. ~~938.34 (3) (c) of the statutes, as affected by 2009 Wisconsin Acts~~  
11 ~~28 and .... (this act), is repealed and recreated to read:~~

12 938.34 (3) (c) A foster home licensed under s. 48.62, a group home licensed  
13 under s. 48.625, or the home of a guardian under s. 48.977 (2).

14 SECTION 61. 938.345 (1) (e) of the statutes is amended to read:

15 938.345 (1) (e) Place any juvenile not found under ch. 880, 2003 stats., or ch.  
16 46, 48, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to  
17 be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively  
18 treats one or more of those categories of juveniles.

19 SECTION 62. 938.345 (4) of the statutes is repealed.

20 SECTION 63. 938.355 (6) (an) 1. of the statutes ~~as affected by 2009 Wisconsin~~

21 Act 94 is amended to read:

22 938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other  
23 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a  
24 dispositional order imposed by the municipal court, the municipal court may petition  
25 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose

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1 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with  
2 monitoring by an electronic monitoring system. A sanction may be imposed under  
3 this subdivision only if, at the time of the judgment, the municipal court explained  
4 the conditions to the juvenile and informed the juvenile of those possible sanctions  
5 for a violation or if before the violation the juvenile has acknowledged in writing that  
6 he or she has read, or has had read to him or her, those conditions and possible  
7 sanctions and that he or she understands those conditions and possible sanctions.  
8 The petition shall contain a statement of whether the juvenile may be subject to s.  
9 938.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the  
10 juvenile may be subject to s. 938.028 or that act, the names and addresses of the  
11 juvenile's Indian custodian, if any, and tribe, if known.

12 SECTION 64. 938.355 (6) (b) of the statutes, as affected by 2009 Wisconsin Act  
13 94, is amended to read:

14 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction  
15 may be brought by the person or agency primarily responsible for the provision of  
16 dispositional services, the district attorney or corporation counsel, or the court that  
17 entered the dispositional order. If the court initiates the motion, that court is  
18 disqualified from holding a hearing on the motion. Notice of the motion shall be given  
19 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all  
20 parties present at the original dispositional hearing. The motion shall contain a  
21 statement of whether the juvenile may be subject to s. 938.028 or the federal Indian  
22 Child Welfare Act, 25 USC 1901 to 1963 and, if the juvenile may be subject to s.  
23 938.028 or that act, the names and addresses of the juvenile's Indian custodian, if  
24 any, and tribe, if known.

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## SECTION 65

SECTION 65. 938.355 (6m) (am) 1. of the statutes ~~as affected by 2009 Wisconsin~~

Act 94 is amended to read:

938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by the municipal court, the municipal court may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at the time of the judgment the municipal court explained the conditions to the juvenile and informed the juvenile of that possible sanction or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible sanction and that he or she understands those conditions and that possible sanction. The petition shall contain a statement of whether the juvenile may be subject to s. 938.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to s. 938.028 or that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

**SECTION 66. Nonstatutory provisions.**

(1) TRANSITION. Notwithstanding the treatment of sections 54.01 (10) and 54.10 (1) of the statutes by this act, all guardianships of the person of a minor under section 54.10, 200<sup>9</sup> stats., or chapter 880, 2003 stats., in effect immediately before the effective date of this subsection remain in effect and shall be considered guardianships under section 48.976 of the statutes, as created by this act, until terminated by court order under section 48.976 (10) of the statutes, as created by this act, all matters commenced under ch. 54, 200<sup>9</sup> stats., with respect to a guardianship of the person of a minor that are pending on the effective date of this subsection shall



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1 be completed under ch. 54, 200<sup>9</sup> stats., and all orders appointing a guardian of the  
 2 person of a minor under ch. 54, 200<sup>9</sup> stats., entered beginning on the effective date  
 3 of this subsection shall be considered guardianships under section 48.976 of the  
 4 statutes, as created by this act.

5 SECTION 67. Initial applicability.

6 (1) PETITIONS FOR GUARDIANSHIP. Except as provided in subsection (2), this act  
 7 first applies to a petition for full, limited, temporary, emergency, ~~standby~~ or  
 8 successor guardianship filed on the effective date of this subsection.

9 (2) DUTIES AND AUTHORITY OF GUARDIAN OF THE PERSON. The treatment of sections  
 10 48.023 (intro.), (3), and (4) and 48.976 (2) (c) 5. of the statutes first applies to a  
 11 guardianship of the person of a minor in effect on the effective date of this subsection. ✓✓

12 SECTION 68. Effective dates. This act takes effect on the first day of the 6th  
 13 month beginning after publication, except as follows:

14 ~~(1) TREATMENT FOSTER HOMES. The repeal and recreation of sections 48.62 (2)~~  
 15 ~~and 938.34 (3) (c) of the statutes takes effect on the date stated in the notice provided~~  
 16 ~~by the secretary of children and families and published in the Wisconsin~~  
 17 ~~Administrative Register under section 48.62 (9) of the statutes.~~

18 (END)

Fix components