

State of Wisconsin  
2011 - 2012 LEGISLATURE

IN 9/21

WED is possible



LRB-1762/R

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen Cont

Reverie

SA ✓

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), 48.185 (2), 48.235 (1) (c), 48.255 (1) (cm),  
4 48.255 (1m) (d), 48.299 (4) (a), 48.299 (4) (b), 48.299 (6) (intro.), 48.299 (6) (d),  
5 48.299 (7), 48.345 (intro.), 48.345 (3) (a), 48.368 (1), 48.42 (1) (d), 48.60 (2) (a),  
6 48.62 (2), 48.625 (3), 48.63 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (2) (a), 48.977  
7 (2) (e), 48.977 (2) (f), 48.977 (4) (b) 3., 48.977 (4) (b) 6., 48.977 (4) (c) 2., 48.977  
8 (4) (i), 48.977 (8), 48.978 (2) (a) 1., 48.978 (2) (a) 2., 48.978 (2) (a) 3., 48.978 (2)  
9 (b) 7., 48.978 (2) (b) 8., 48.978 (2) (b) 11., 48.978 (2) (e) 2., 48.978 (2) (e) 4., 48.978  
10 (2) (f) 2., 48.978 (2) (f) 4., 48.978 (2) (f) 5., 48.978 (3) (b) 2., 48.978 (3) (e) 1., 48.978  
11 (3) (e) 3., 48.978 (3) (g) 3., 48.978 (3) (g) 4., 48.978 (3) (g) 5., 48.978 (7), 48.981  
12 (2) (a) (intro.), 48.981 (2) (b), 48.981 (2) (bm) 1. (intro.), 48.981 (2) (bm) 2. (intro.),  
13 48.981 (2m) (title), 49.32 (1) (am), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18. c., 54.01  
14 (10), 54.10 (1), 54.52 (1), 55.03 (1), 55.08 (1) (b), 55.08 (2) (a), 55.10 (4) (intro.),  
15 115.76 (12) (b) 2., 118.125 (2) (L), 146.82 (2) (a) 9. a., 146.82 (2) (a) 9. c., 214.37

1 (4) (k) 1., 215.26 (8) (e) 1., 757.69 (1m) (e), 808.075 (4) (a) 11., 814.66 (1) (m),  
 2 938.02 (8), 938.255 (1) (cm), 938.34 (3) (a), 938.34 (3) (c), 938.345 (1) (e), 938.355  
 3 (6) (an) 1., 938.355 (6) (b) and 938.355 (6m) (am) 1.; and **to create** 48.235 (3) (c),  
 4 48.976, 48.977 (4) (cm) 1m., 48.978 (2) (d) 1m., 48.979, 48.981 (2r), 48.981 (7)  
 5 (a) 11v., 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the statutes; **relating to:**  
 6 guardianships of children.

**Analysis by the Legislative Reference Bureau**

*on any grounds*

**INTRODUCTION**

*relinquishment of custody or of*

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.

*rather than on the grounds of not having been immunized as required by law*

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.

*or death*

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 standby guardianships and permits a parent to delegate by a power of attorney his or her powers regarding the care and custody of a child.

**THE BILL** *and protective placements of children*

**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

*(10)* The bill also requires the full guardian of a child to notify the court immediately of any change of address of the child or guardian and to make annual reports to the court on the condition of the child. *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, 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.

*In addition, the*

~~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.

*statute*

**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 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. <sup>parent</sup>

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 or as a successor 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 or in need of 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. In addition, for purposes of standing to present evidence and argument in a proceeding on a guardianship petition, the bill defines "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.

**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: <sup>or observe</sup>

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.

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

5. Inspect reports and records relating to the child, the child's family, and the proposed guardian, including law enforcement, juvenile court, social welfare agency, child abuse and neglect, pupil, mental health, and health care records, to the extent necessary to fulfill the duties and responsibilities required of the GAL in the proceeding. The bill requires the juvenile court to include in the order appointing the GAL an order requiring the custodian of those reports or records to permit the GAL to inspect and copy those reports or records on presentation by the GAL of a copy of the order.

**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 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 45 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, any party may request, or 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~~ ~~some 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, 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. 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 successor guardian, which is a person designated to become guardian on the death, unwillingness or inability to act,

guardian  
would be a  
suitable  
guardian

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.

**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.

*do one of the following, unless the juvenile court adjourns the hearing* ✓

**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. If the juvenile court orders the appointment of a guardian for a child who has been adjudged to be delinquent or in need of protection or services and the order changes the placement of the child, the disposition must, if applicable, include certain findings, orders, statements, and determinations relating to, among other things, the welfare of the child and reasonable efforts to prevent the removal of the child from the home, that are required under current law when a juvenile court changes the placement of such a 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.

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**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

*STET: leave as typed*

parents ✓

if not appointed until after the hearing

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.

or observe

**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.

**Post-appointment procedures**

**Successor guardian.** As part of a petition for the original appointment of a guardian of a child or at any time after that appointment, a person may petition for the appointment of one or more successor guardians to assume the duty and authority of full, limited, or temporary guardianship in the event of the death, unwillingness or inability to act, resignation, or removal by the juvenile court of the initially appointed guardian or during a period when the initially appointed guardian is temporarily unable to fulfill his or her duties. If the petition for the appointment of a successor guardian is brought after the original appointment of a guardian, the petition must be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian.

The juvenile court may also appoint a successor guardian after a guardian has died, been removed, or resigned. 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.

After a guardian has died, been removed, or resigned, a successor guardian may be appointed without a hearing, but the juvenile court may, upon request of any

4)

Child's parent and

5)

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 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



*of relinquishment of custody or*

*who has been adjudged to be in need of protection or services under the Children's Code on the grounds of not having been immunized as required by law, a child*

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.

*of relinquishment of custody or*

**Protection or services guardianships**

*on any grounds other than the grounds of not having been immunized as required by law*

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.

*while under ten years of age,*

*stat: leave as typed*

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 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.

**Standby guardianships**

Under current law, a petition for the appointment of a standby guardian to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of a parent of a child must be joined by each parent of the child who with reasonable diligence can be located. If a parent can be located, but refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, the petition may be filed without the other parent joining in the petition.

This bill limits that joinder requirement to each parent *who has legal custody* of the child, which means: 1) a parent to whom a family court has granted the right

*truancy from home or school, being a school dropout, or*

and responsibility to make major decisions concerning the child; or 2) in the case of a nonmarital child, the child's mother. Accordingly, under the bill, a parent who does not have legal custody of the child is not required to join in the guardianship petition. The bill also permits one parent who has legal custody of a child to file a guardianship petition without the other parent joining in the petition if that other parent *fails*, rather than refuses, to join in the petition or to indicate that he or she is fit, willing, and able to exercise the duty and authority of guardianship.

In addition, under current law, before the juvenile court may appoint a person as the standby guardian of a child, the juvenile court must make certain findings, including a ~~finding that the person is willing and able to act as standby guardian.~~ ~~This bill requires~~ a finding that a person is *fit*, willing, and able to act as standby guardian ~~before the juvenile court may appoint him or her as standby guardian.~~

#### ***Delegation of powers by parent***

The bill permits a parent who has legal custody of a child, by a power of attorney properly executed by all parents who have legal custody of the child, 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, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. The bill provides that such a delegation of powers does not deprive the parent of any of his or her powers regarding the care and custody of the child and does not prevent or supersede: 1) an investigation of suspected or threatened abuse or neglect of the child under the child abuse and neglect reporting law; 2) the child from being taken into and held in custody under the Children's Code or the Juvenile Justice Code; 3) a juvenile court intake worker from conducting an intake inquiry to determine whether the available facts establish juvenile court jurisdiction over the child; or 4) the juvenile court from exercising its child or juvenile in need of protection or services jurisdiction over the child.

Under current law, a person who provides care and maintenance for four or fewer children must obtain a license to operate a foster home. Current law, however, permits a relative or guardian of a child to provide care and maintenance for a child without obtaining a license to operate a foster home. This bill exempts a person who is delegated care and custody of a child as provided in the bill from the requirement that the person obtain a license to operate a foster home in order to provide care and maintenance for the child. The bill, however, prohibits a parent from placing a child in a foster home, group home, or inpatient treatment facility by means of a delegation of powers as provided in the bill. Under the bill, those placements may be made only by means of a juvenile court order or a voluntary agreement or admission as provided under current law.

Under current law, certain persons who have reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or who have reason to believe that such a child has been threatened with abuse or neglect and that abuse or neglect will occur must report that suspected or threatened abuse or neglect to the county department of human services or social services, the sheriff, or the local police department. Any other person may report suspected or threatened

Insert  
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abuse or neglect of a child. This bill exempts a person who is delegated care and custody of a child as provided in the bill from the requirement that he or she report any suspected or threatened abuse or neglect of the child. Instead, the bill permits such a person to report any suspected or threatened abuse or neglect of the child.

### ***Protective placements***

Finally, under current law, the juvenile court may order a protective placement, which is a placement for the residential care and custody of an individual, for a minor 14 years of age or over who is alleged to have a developmental disability and on whose behalf a petition for guardianship has been submitted. This bill eliminates the requirement that a guardianship petition be submitted in order for a juvenile court to order a protective placement for a minor 14 years of age or over who is alleged to have a developmental disability.

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

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

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

12           48.023 (3) The right and duty of reasonable visitation of with the child and,  
13 subject to an order of a court of competent jurisdiction, the authority to determine  
14 reasonable visitation with the child.

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

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

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

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

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

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

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

21           48.14 (11) Granting visitation privileges under s. ~~54.56~~ 48.976 (11).

22           **SECTION 8.** 48.185 (2) of the statutes is amended to read:

23           48.185 (2) In an action under s. 48.41, venue shall be in the county where the  
24 birth parent or child resides at the time that the petition is filed. Venue for any  
25 proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under subch. VIII

1 or s. 48.976 when the child has been placed outside the home pursuant to a  
2 dispositional order under s. 48.345 ~~or~~, 48.347, or 938.345 shall be in the county where  
3 the dispositional order was issued, unless the child's county of residence has  
4 changed, or the parent of the child or the expectant mother of the unborn child has  
5 resided in a different county of this state for 6 months. In either case, the court may,  
6 upon a motion and for good cause shown, transfer the case, along with all appropriate  
7 records, to the county of residence of the child, parent, or expectant mother.

8 **SECTION 9.** 48.235 (1) (c) of the statutes is amended to read:

9 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is  
10 the subject of a proceeding to terminate parental rights, whether voluntary or  
11 involuntary, for a child who is the subject of a contested adoption proceeding, and for  
12 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

13 **SECTION 10.** 48.235 (3) (c) of the statutes is created to read:

14 48.235 (3) (c) In addition to any other duties and responsibilities required of  
15 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of  
16 a proceeding under s. 48.976 shall do all of the following unless granted leave by the  
17 court not to do so:

18 1. Personally, or through a trained designee, meet with <sup>or observe</sup> the child, assess the  
19 appropriateness and safety of the environment of the child, and, if appropriate to the  
20 age and developmental level of the child, interview the child and determine the  
21 child's goals and concerns regarding the proposed guardianship. If the child is 12  
22 years of age or over, the guardian ad litem shall also advise the child that he or she  
23 may request the appointment of counsel or retain counsel of his or her own choosing.

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

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

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

9           5. To the extent necessary to make recommendations to the court concerning  
10 the best interests of the child, ~~to~~ <sup>stet: leave as typed</sup> report to the court concerning the suitability of the  
11 proposed guardian to serve as guardian of the child and on any other matter that the  
12 court requests, and otherwise to fulfill the duties and responsibilities required of the  
13 guardian ad litem in the proceedings, inspect reports and records relating to the  
14 child, the child's family, and the proposed guardian, including law enforcement  
15 reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss.  
16 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a)  
17 and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11v.,  
18 pupil records under s. 118.125 (2) (L), mental health records under s. 51.30 (4) (b) 4.,  
19 and health care records under s. 146.82 (2) (a) 4. The court shall include in the order  
20 appointing the guardian ad litem an order requiring the custodian of any report or  
21 record specified in this subdivision to permit the guardian ad litem to inspect and  
22 copy the report or record on presentation by the guardian ad litem of a copy of the  
23 order. A guardian ad litem who obtains access to a report or record described in this  
24 subdivision shall keep the information contained in the report or record confidential  
25 and may use or further disclose that information only for purpose of the proceedings.

1           **SECTION 11.** 48.255 (1) (cm) of the statutes is amended to read:

2           48.255 (1) (cm) Whether the child may be subject to s. 48.028 or the federal  
3 Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to  
4 s. 48.028 or that act, the names and addresses of the child's Indian custodian, if any,  
5 and Indian tribe, if known.

6           **SECTION 12.** 48.255 (1m) (d) of the statutes is amended to read:

7           48.255 (1m) (d) Whether the unborn child, when born, may be subject to s.  
8 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the  
9 unborn child may be subject to s. 48.028 or that act, the name and address of the  
10 Indian tribe in which the unborn child may be eligible for affiliation when born, if  
11 known.

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

13           48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at  
14 the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978  
15 (2) (e) and (3) (f) 2.

16           **SECTION 14.** 48.299 (4) (b) of the statutes is amended to read:

17           48.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
18 statutory rules of evidence are binding at a hearing for a child held in custody under  
19 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a  
20 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing  
21 about changes in placement, revision of dispositional orders, extension of  
22 dispositional orders or termination of guardianship orders entered under s. 48.976,  
23 48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall  
24 admit all testimony having reasonable probative value, but shall exclude  
25 immaterial, irrelevant or unduly repetitious testimony or evidence that is

1 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has  
2 demonstrable circumstantial guarantees of trustworthiness. The court shall give  
3 effect to the rules of privilege recognized by law. The court shall apply the basic  
4 principles of relevancy, materiality and probative value to proof of all questions of  
5 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may  
6 be made and shall be noted in the record.

7 **SECTION 15.** 48.299 (6) (intro.) of the statutes is amended to read:

8 48.299 (6) (intro.) If a man who has been given notice under s. 48.27 (3) (b) 1.,  
9 48.976 (3) (b) 1., 48.977 (4) (c) 1., or 48.978 (2) (c) 1. appears at any hearing for which  
10 he received the notice, alleges that he is the father of the child, and states that he  
11 wishes to establish the paternity of the child, all of the following apply:

12 **SECTION 16.** 48.299 (6) (d) of the statutes is amended to read:

13 48.299 (6) (d) The court may stay the proceedings under this chapter pending  
14 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court  
15 determines that the paternity proceedings will not unduly delay the proceedings  
16 under this chapter and the determination of paternity is necessary to the court's  
17 disposition of the ~~child if the child is found to be in need of protection or services~~  
18 proceeding or if the ~~child~~ **STET: leave as typed** court determines or has reason to know that the paternity  
19 proceedings may result in a finding that the child is an Indian child and in a petition  
20 by the child's parent, Indian custodian, or tribe for transfer of the proceeding to the  
21 jurisdiction of the tribe.

22 **SECTION 17.** 48.299 (7) of the statutes is amended to read:

23 48.299 (7) If a man who has been given notice under s. 48.27 (3) (b) 1., 48.976  
24 (3) (b) 1., 48.977 (4) (c) 1., or 48.978 (2) (c) 1. appears at any hearing for which he  
25 received the notice but does not allege that he is the father of the child and state that



1 he wishes to establish the paternity of the child or if no man to whom such notice was  
2 given appears at a hearing, the court may refer the matter to the state or to the  
3 attorney responsible for support enforcement under s. 59.53 (6) (a) for a  
4 determination, under s. 767.80, of whether an action should be brought for the  
5 purpose of determining the paternity of the child.

6 **SECTION 18.** 48.345 (intro.) of the statutes is amended to read:

7 **48.345 Disposition of child or unborn child of child expectant mother**  
8 **adjudged in need of protection or services.** (intro.) If the judge finds that the  
9 child is in need of protection or services or that the unborn child of a child expectant  
10 mother is in need of protection or services, the judge shall enter an order deciding one  
11 or more of the dispositions of the case as provided in this section under a care and  
12 treatment plan, except that the order may not place any child not specifically found  
13 under this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled,  
14 mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that  
15 exclusively ~~treat~~ treats those categories of children, and the court may not place any  
16 child expectant mother of an unborn child in need of protection or services outside  
17 of the child expectant mother's home unless the court finds that the child expectant  
18 mother is refusing or has refused to accept any alcohol or other drug abuse services  
19 offered to her or is not making or has not made a good faith effort to participate in  
20 any alcohol or other drug abuse services offered to her. The dispositions under this  
21 section are as follows:

22 **SECTION 19.** 48.345 (3) (a) of the statutes is amended to read:

23 48.345 (3) (a) The home of a parent ~~or~~, other relative, or guardian of the child,  
24 except that the judge may not designate the home of a parent ~~or~~, other relative, or  
25 guardian of the child as the child's placement if the parent ~~or~~, other relative, or

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

7 **SECTION 20.** 48.368 (1) of the statutes is amended to read:

8 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41  
9 or 48.415 or an appeal from a judgment terminating or denying termination of  
10 parental rights is filed during the year in which a dispositional order under s. 48.355,  
11 an extension order under s. 48.365, a voluntary agreement for placement of the child  
12 under s. 48.63, or a guardianship order under ch. 54, 2009 stats., or ch. 880, 2003  
13 stats., or s. 48.976 or 48.977 or ch. 54 is in effect, the dispositional or extension order,  
14 voluntary agreement, or guardianship order shall remain in effect until all  
15 proceedings related to the filing of the petition or an appeal are concluded.

16 **SECTION 21.** 48.42 (1) (d) of the statutes is amended to read:

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

21 ~~**SECTION 22.** 48.60 (2) (a) of the statutes is amended to read:~~

22 ~~48.60 (2) (a) A relative or, guardian, or person delegated care and custody of~~  
23 ~~a child under s. 48.979 who provides care and maintenance for such children.~~

24 ~~**SECTION 23.** 48.62 (2) of the statutes is amended to read:~~

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LPS: keep lines 1 to 15, but delete the scored material on lines 1 & 2 as shown in green and make the struck word "for" plain on line 1.

LPS: Do NOT DELETE lines 1 to 15, but do make the changes lines 1 + 2 shown in green on lines 1 + 2

PLAIN  
↓

1 48.62 (2) A relative <sup>PLAIN</sup> or a guardian of a child, ~~or a person delegated care and~~  
 2 ~~custody of a child under s. 48.979~~ who provides care and maintenance for the child  
 3 is not required to obtain the license specified in this section. The department, county  
 4 department, or licensed child welfare agency as provided in s. 48.75 may issue a  
 license to operate a foster home to a relative who has no duty of support under s. 49.90  
 (1) (a) and who requests a license to operate a foster home for a specific child who is  
 either placed by court order or who is the subject of a voluntary placement agreement  
 under s. 48.63. The department, a county department, or a licensed child welfare  
 agency may, at the request of a guardian appointed under s. 48.976, 48.977, or  
 48.978, ch. 54, 2009 stats., or ch. 880, 2003 stats., license the guardian's home as a  
 foster home for the guardian's minor ward who is living in the home and who is placed  
 in the home by court order. Relatives with no duty of support and guardians  
 appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2009 stats., or ch. 880, 2003  
 stats., who are licensed to operate foster homes are subject to the department's  
 licensing rules.

SECTION 24. 48.625 (3) of the statutes is amended to read:

48.625 (3) This section does not apply to a foster home licensed under s. 48.62  
 (1) or to a relative or guardian of a child or a person delegated care and custody of  
a child under s. 48.979 who provides care and maintenance for the child.

SECTION 25. 48.63 (2) of the statutes is amended to read:

48.63 (2) No person may place a child or offer or hold himself or herself out as  
 able to place a child, except as provided in this section. Enrollment of a child by a  
 parent or guardian in an educational institution shall and delegation of care and  
custody of a child to an agent under s. 48.979 do not constitute a placement for the  
 purposes of this section.

1           **SECTION 26.** 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 27.** 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, 2009 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), 2009 stats., or s. 880.17 (1), 2003 stats.

13           **SECTION 28.** 48.976 of the statutes is created to read:

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

15           DEFINITIONS. In this section:

16           (a) "Interested person" means any of the following:

17           1. For purposes of a petition for guardianship of a child, any of the following:

18           a. The child, if he or she has attained 12 years of age, and the child's guardian

19           ad litem and counsel, if any. 

20           b. The child's ~~parents~~, guardian, legal custodian, and physical custodian.

21           c. Any person who has filed a declaration of paternal interest under s. 48.025,

22           who is alleged to the court to be the father of the child, or who may, based on the

23           statements of the mother or other information presented to the court, be the father

24           of the child.

25           d. Any individual who is nominated as guardian or as a successor guardian.



1           (2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY. (a) *Appointment*. 1. This  
2 section may be used for the appointment of a guardian of the person for a child. An  
3 appointment of a guardian of the estate of a child shall be conducted under the  
4 procedures specified in ch. 54. If the court assigned to exercise jurisdiction under this  
5 chapter has jurisdiction over a proceeding for the appointment of a guardian of the  
6 person for a child or continuing jurisdiction over such a guardianship and the court  
7 assigned to exercise probate jurisdiction has jurisdiction over a proceeding for the  
8 appointment of a guardian of the estate of the child or continuing jurisdiction over  
9 such a guardianship, the court assigned to exercise jurisdiction under this chapter  
10 may order those proceedings or guardianships to be consolidated under the  
11 jurisdiction of the court assigned to exercise jurisdiction under this chapter. Upon  
12 such consolidation, the court assigned to exercise jurisdiction under this chapter  
13 shall order all records relating to the guardianship of the estate of the child to be  
14 transferred to the court assigned to exercise jurisdiction under this chapter and that  
15 court shall retain those records as required under SCR chapter 72. This section does  
16 not prohibit a person from petitioning a court under s. 48.831, 48.977, or 48.978 for  
17 the appointment of a guardian of the person of a child.

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

22           (b) *Nomination by parent or child*. 1. A parent may nominate a guardian and  
23 successor guardian for any of his or her children who is in need of guardianship,  
24 including a nomination by will. Subject to the rights of a surviving parent, the court  
25 shall appoint the person nominated as guardian or successor guardian, unless the

1 court finds that appointment of the person nominated is not in the child's best  
2 interests.

Carry out the duties of a

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

8 3. In determining who is appointed as guardian, the court shall consider the  
9 nominations of the parents and child and the opinions of the parents and child as to  
10 what is in the best interests of the child, but the best interests of the child as  
11 determined by the court shall control in making the determination when those  
12 nominations and opinions are in conflict with those best interests.

13 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.  
14 5., a guardian appointed under sub. (3) (f) 2. shall have all of the duties and authority  
15 specified in s. 48.023, unless those duties and that authority are limited under subd.

16 2. A

17 2. 'Limited guardianship.' The court may order that the duties and authority  
18 of a guardian appointed under sub. (3) (f) 2. be limited. The duties and authority of  
19 a limited guardian shall be as specified by the order of appointment under sub. (3)  
20 (f) 2. The duties and authority of a full guardian shall apply to a limited guardian  
21 to the extent relevant to the duties or authority of the limited guardian, except as  
22 limited by the order of appointment. The court may limit the authority of a guardian  
23 with respect to any power to allow the parent to retain such power to make decisions  
24 as is within the parent's ability to exercise effectively and may limit the physical  
25 custody of a guardian to allow shared physical custody with the parent if shared

(no 7) A guardian appointed under sub. (3) (f) 2. shall also ~~also~~ immediately notify  
the court that appointed the guardian of any change in the address of the guardian or child  
and shall make an annual report to that court on the condition of the child. The report shall  
include the location of the child, the health of the child, and any recommendations regarding  
the child. (condition)

1 physical custody is in the best interests of the child. The court shall set an expiration  
2 date for a limited guardianship order, which may be extended for good cause shown.

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

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

11 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the  
12 parent as a result of the parent-child relationship that are not assigned to the  
13 guardian or otherwise limited by statute or court order. A guardian acting on behalf  
14 of a child may exercise only those powers that the guardian is authorized to exercise  
15 by statute or court order. The court may authorize a guardian to exercise only those  
16 powers that are necessary to provide for the care, custody, and control of the child and  
17 to exercise those powers in a manner that is appropriate to the child.

18 **(3) PROCEDURES.** (a) *Petition.* Any person, including a child 12 years of age or  
19 over on his or her own behalf, may petition for the appointment of a guardian for a  
20 child. A petition for guardianship may include an application for protective  
21 placement or protective services or both under ch. 55. The petition shall be entitled  
22 "In the interest of .... (child's name), a person under the age of 18" and shall state all  
23 of the following, if known to the petitioner:

24 1. The name, date of birth, and address of the child.



1           2. The names and addresses of the petitioner, the child's parents, current  
2 guardian, and legal custodian, if any, the proposed guardian, any proposed successor  
3 guardians, and all other interested persons.

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

6           4. If the petitioner is requesting a full guardianship, the facts and  
7 circumstances establishing that the child's parents are unfit, unwilling, or unable to  
8 provide for the care, custody, and control of the child or other compelling facts and  
9 circumstances demonstrating that a full guardianship is necessary.

10          5. If the petitioner is requesting a limited guardianship, the facts and  
11 circumstances establishing that the child's parents need assistance in providing for  
12 the care, custody, and control of the child and a statement of the specific duties and  
13 authority under s. 48.023 sought by the petitioner for the proposed guardian and the  
14 specific parental rights and duties that the petitioner seeks to have transferred.

15          6. If the petitioner is requesting a temporary guardianship, the facts and  
16 circumstances establishing that the child's particular situation, including the  
17 inability of the child's parents to provide for the care, custody, and control of the child  
18 for a temporary period of time, requires the appointment of a temporary guardian;  
19 the reasons for the appointment of a temporary guardian; and the powers requested  
20 for the temporary guardian.

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

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

The information required under s. 822.29 (1)

1) 9. Whether the proceedings are subject to the Uniform Child Custody  
2) Jurisdiction and Enforcement Act under ch. 822.

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

7 11. If the petitioner knows or has reason to know that the child is an Indian  
8 child, reliable and credible information showing that continued custody of the child  
9 by the child's parent or Indian custodian is likely to result in serious emotional or  
10 physical damage to the child under s. 48.028 (4) (d) 1. and that active efforts under  
11 s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family  
12 and that those efforts have proved unsuccessful and, if the proposed guardianship  
13 would change the placement of the child from the home of his or her parent or Indian  
14 custodian to a placement outside that home, a statement as to whether the new  
15 placement is in compliance with the order of placement preference under s. 48.028  
16 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance  
17 with that order, specific information showing good cause, as described in s. 48.028  
18 (7) (e), for departing from that order.

Court

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

22 13. If the child has been adjudged to be in need of protection or services under  
23 s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (6), (9), (10), (10m), (11), or (11m) or 938.13  
24 (4) or (12) or has been adjudged delinquent under s. 938.12, and is subject to a court  
25 order under s. 48.345, 48.357, 48.363, 48.365, 938.34, 938.345, 938.357, 938.363, or

1 938.365, and the petition filed under this subsection requests a change in the  
2 placement of the child or a revision of the order, the information that is required to  
3 be included in a request for a change in placement under s. 48.357 (2m) (a) or 938.357  
4 (2m) (a), whichever is applicable, or a request for a revision of the order under s.  
5 48.363 (1) (b) or 938.363 (1) (b), whichever is applicable.

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

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

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

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

1 (c) Statement by proposed guardian. (1) At least 96 hours before the hearing  
2 under par. (d), the proposed guardian shall submit to the court a sworn and notarized  
3 statement as to the number of persons for whom the proposed guardian is  
4 responsible, whether as a parent, guardian, or legal custodian, as to the proposed  
5 guardian's income, assets, debts, and living expenses, and as to whether the  
6 proposed guardian is currently charged with or has been convicted of a crime or has  
7 been determined under s. 48.981 (3) (c) to have abused or neglected a child.

X

No 91

8 (2) If subd. 1. applies to the proposed guardian, he or she shall include in the  
9 sworn and notarized statement a description of the circumstances surrounding the  
10 applicable event under subd. 1. charges conviction or determination

X

11 (d) Hearing. 1. The initial hearing on a petition for guardianship, other than  
12 a petition for emergency guardianship under sub. (5), shall be heard within 45 days  
13 after the filing of the petition. At the hearing the court shall first determine whether  
14 any party wishes to contest the petition. If the petition is not contested, the court  
15 shall immediately proceed to a fact-finding and dispositional hearing, unless an  
16 adjournment is requested. If the petition is contested or if an adjournment is  
17 requested, the court shall set a date for a fact-finding and dispositional hearing that  
18 allows reasonable time for the parties to prepare but is not more than 30 days after  
19 the initial hearing. The court shall hold the fact-finding and dispositional hearing  
20 at the time specified or set by the court under this subdivision, at which any party  
21 may present evidence, including expert testimony, and argument relating to the  
22 allegations in the petition.

23 2. If the petition is contested, any party may request, or the court may propose  
24 on its own motion, that an investigation be conducted to determine whether the child  
25 is a proper subject for guardianship and whether the proposed guardian's home is

25

guardian's home is

guardian would be a

guardian

1 suitable for the child. If the court determines that such an investigation is necessary  
 2 and that the welfare of the child demands such an investigation, the court may order  
 3 the county department, a licensed child welfare agency, or, in a county having a  
 4 population of 750,000 or more, the department or an agency under contract with the  
 5 department to conduct such an investigation. The person conducting the  
 6 investigation shall file a report of its investigation with the court at least 96 hours  
 7 before the fact-finding and dispositional hearing. The parents of the child and the  
 8 proposed guardian shall reimburse the person conducting the investigation for the  
 9 cost of the investigation according to a fee schedule established by the department  
 10 based on ability to pay.

11 3. The proposed guardian and any proposed successor guardian shall be  
 12 physically present at the hearing unless the court excuses the attendance of either  
 13 or, for good cause shown, permits attendance by telephone. The child is not required  
 14 to attend the hearing, but if the child has nominated the proposed guardian, the child  
 15 shall provide to his or her guardian ad litem sufficient information for the guardian  
 16 ad litem to advise the court whether the nomination is in the best interests of the  
 17 child.

wishes wishes

18 4. If a man who has been given notice under par. (b) 1. appears at the hearing,  
 19 alleges that he is the father of the child, and states that he ~~wishes~~ to establish the  
 20 paternity of the child, s. 48.299 (6) applies.

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

23 1. Any nominations made under sub. (2) (b) 1. or 2. and the opinions of the  
 24 parents and child as to what is in the best interests of the child, but the best interests

The court may order a temporary guardianship under sub. (4) pending the outcome of the paternity proceedings.

1 of the child as determined by the court shall control in making the determination  
2 when those nominations and opinions are in conflict with those best interests.

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

5 3. If the child is an Indian child, the order of placement preference under s.  
6 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as  
7 described in s. 48.028 (7) (e), for departing from that order.

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

*unless the court adjourns the hearing under par. (g)*

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

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

*Insert 30-15*

16 2. A disposition ordering that the proposed guardian be appointed as the child's  
17 full guardian under sub. (2) (c) 1., limited guardian under sub. (2) (c) 2., or temporary  
18 guardian under sub. (2) (c) 3., if the court finds that the petitioner has proved the  
19 allegations in the petition by clear and convincing evidence and determines that such  
20 an appointment is in the best interests of the child. If the court orders the  
21 appointment of a guardian for a child described in par. (a) 13. and the order changes  
22 the placement of the child, the disposition shall include the applicable findings,  
23 orders, statements, and determinations specified in s. 48.357 (2m) (c) or 938.357 (2m)  
24 (c), whichever is applicable. The disposition may also designate an amount of  
25 support to be paid by the child's parents and, subject to sub. (12), may include

appoints

Insert  
31-4

1 reasonable rules of parental visitation, which rules the court shall determine in  
2 accordance with the factors specified in s. 767.41 (5), as applicable. If the court ~~orders~~  
the proposed guardian ~~to be appointed~~ as the child's guardian, the court shall issue  
letters of guardianship to the guardian.

5 (4) TEMPORARY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court  
6 may appoint a temporary guardian for a child for a period not to exceed 180 days,  
7 except that the court may extend this period for good cause shown for one additional  
8 180-day period. The court's determination and order appointing the temporary  
9 guardian shall specify the authority of the temporary guardian, which shall be  
10 limited to those acts that are reasonably related to the reasons for the appointment  
11 that are specified in the petition for temporary guardianship. The authority of the  
12 temporary guardian is limited to the performance of those acts stated in the order  
13 of appointment.

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

17 (c) *Cessation of powers.* The duties and powers of the temporary guardian cease  
18 upon the expiration of the ~~two~~ period specified in par. (a), or the termination as  
19 determined by the court of the situation of the child that was the cause of the  
20 temporary guardianship. Upon cessation of a temporary guardianship, the  
21 temporary guardian shall file with the court any report that the court requires.

22 (5) EMERGENCY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court  
23 may appoint an emergency guardian for a child for a period not to exceed 60 days.  
24 The court's determination and order appointing the emergency guardian shall  
25 specify the authority of the emergency guardian and shall be limited to those acts

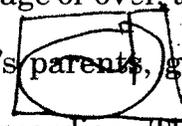
1 that are reasonably related to the reasons for the appointment that are specified in  
2 the petition for emergency guardianship. The authority of the emergency guardian  
3 is limited to the performance of those acts stated in the order of appointment.

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

6 1. Any person may petition for the appointment of an emergency guardian for  
7 a child. The petition shall contain the information required under sub. (3) (a) and  
8 shall specify the reasons for the appointment of an emergency guardian and the  
9 powers requested for the emergency guardian.

10 2. The petitioner shall give notice of the petition and of the time and place of  
11 the hearing under subd. 4. to the child, if 12 years of age or over, the child's guardian  
12 ad litem, and the child's counsel, if any; the child's ~~parents~~, guardian, and legal  
13 custodian; and the person nominated as emergency guardian. The notice and a copy  
14 of the petition shall be served as soon after the filing of the petition as possible, shall  
15 be served by the most practical means possible, including personal service or service  
16 by electronic mail or telephone, and shall include notice of the right to request the  
17 appointment of counsel or to retain counsel of the party's own choosing and of the  
18 right to petition for reconsideration or modification of the emergency guardianship  
19 under subd. 5. If the petitioner serves notice of the hearing after the hearing is  
20 conducted and the court has entered an order, the petitioner shall include the court's  
21 order with the notice of the hearing.

22 3. The court shall appoint a guardian ad litem for the child as soon as possible  
23 after the filing of the petition. The court shall attempt to appoint the guardian ad  
24 litem before the hearing on the petition, but may appoint the guardian ad litem after  
25 the hearing if the court finds that exigent circumstances require the immediate



← STET: leave as typed



↑ if not appointed until after the hearing ↑

1 appointment of an emergency guardian. The guardian ad litem shall attempt to meet  
2 <sup>or observe</sup> with the child before the hearing or as soon as is practicable after the hearing, but  
3 not later than 3 calendar days after the hearing. The guardian ad litem shall report  
4 to the court on the advisability of the emergency guardianship at the hearing or not  
5 later than 7 calendar days after the hearing.

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

12 5. If the court appoints an emergency guardian, any person specified in subd.  
13 2. may petition for reconsideration or modification of the emergency guardianship  
14 and the court shall hold a rehearing on the issue of appointment of the emergency  
15 guardian within 30 calendar days after the filing of the petition.

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

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

1 (6) STANDBY GUARDIANSHIP. A petition for the appointment of a standby  
2 guardian of the person of a child to assume the duty and authority of guardianship  
3 on the incapacity, death, or debilitation and consent, of the child's parent shall be  
4 brought under s. 48.978.

5 (7) SUCCESSOR GUARDIAN. (a) *Appointment; original petition or during*  
6 *guardianship.* 1. As part of a petition for the original appointment of a guardian of  
7 a child or at any time after that appointment, a person may petition for the  
8 appointment of one or more successor guardians of the child to assume the duty and  
9 authority of full, limited, or temporary guardianship in the event of an occurrence  
10 specified in subd. 2. Except as provided in par. (b), if the petition for the appointment  
11 of a successor guardian is brought after the original appointment of a guardian, the  
12 petition shall be heard in the same manner and subject to the same requirements as  
13 provided under this section for an original appointment of a guardian.

14 2. After hearing, the court may designate one or more successor guardians  
15 whose appointment shall become effective immediately upon the death,  
16 unwillingness or inability to act, resignation, or removal by the court of the initially  
17 appointed guardian or during a period, as determined by the initially appointed  
18 guardian, when the initially appointed guardian is temporarily unable to fulfill his  
19 or her duties, including during an extended vacation or illness. The powers and  
20 duties of the successor guardian shall be the same as those of the initially appointed  
21 guardian. The successor guardian shall receive a copy of the court order establishing  
22 or modifying the initial guardianship and of the order designating the successor  
23 guardian. Upon ~~the occurrence of an event specified in this subdivision~~, the successor guardian shall so notify the court.

24 Upon notification, the court shall issue new letters of guardianship that specify that

and request the court to issue new letters of guardianship

① the successor guardianship is permanent or that specify the ~~five~~ <sup>one</sup> period for a  
2 temporary successor guardianship.

3 (b) *Appointment; when no guardian.* 1. If a guardian dies, is removed by order  
4 of the court, or resigns and the resignation is accepted by the court, the court, on its  
5 own motion or upon petition of any interested person, may appoint a competent and  
6 suitable person as successor guardian. The court may, upon request of any interested  
7 person or on its own motion, direct that the petition or motion for the appointment  
8 of a successor guardian be heard in the same manner and subject to the same  
9 requirements as provided under this section for an original appointment of a  
10 guardian.

11 2. If the appointment under subd. 1. is made without hearing, the successor  
12 guardian shall provide notice to all interested persons of the appointment, the right  
13 to request the appointment of counsel or to retain counsel of the interested person's  
14 own choosing, and the right to petition for reconsideration of the appointment of the  
15 successor guardian. The notice shall be served personally or by mail not later than  
16 10 days after the appointment.

17 (8) MODIFICATION OF GUARDIANSHIP ORDER. (a) Any interested person or other  
18 person approved by the court may request a modification of a guardianship order  
19 entered under this subsection or sub. (3) (f) 2. or the court may, on its own motion,  
20 propose such a modification. The request or motion shall set forth in detail the  
21 nature of the proposed modification, shall allege facts sufficient to show that there  
22 has been a substantial change in circumstances since the last order affecting the  
23 guardianship was entered and that the proposed modification would be in the best  
24 interests of the child, and shall allege any other information that affects the  
25 advisability of the court's disposition.

person requesting or proposing the modification shall notify

(b) The court shall 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 court's guardianship order, unless written waivers of objections to the modification are signed by all interested persons and the court approves the waivers.

(c) If a hearing is to be held, the court shall notify all interested persons at least 7 days prior to the hearing of the date, place, and purpose of the hearing. A copy of the request or proposal shall be attached to the notice. The court may order a modification if, at the hearing, the 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.

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

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

1. Abuses or neglects the child or knowingly permits others to do so.
2. Fails to disclose information specified in sub. (3) (c) that would have prevented appointment of the person as guardian.
3. Otherwise fails to perform any of his or her duties as a guardian under s. 48.023.

(c) *Procedure.* Any interested person or other person approved by the court may file a petition requesting a review of the conduct of a guardian or the court, on its own motion, may propose such a review. The request or motion shall allege facts

person requesting or proposing the review shall provide

1 sufficient to show cause under par. (b) for the court to impose a remedy under par.  
2 (d). The court shall hold a hearing on the request or motion not more than 30 days  
3 after the filing of the request or proposal. Not less than 7 days before the date of the  
4 hearing, the ~~court shall cause~~ notice of the hearing ~~to be provided~~ to the child, his or  
5 her or parents, the guardian, and any other persons ~~as determined~~ <sup>required</sup> by the court. A  
6 copy of the request or motion shall be attached to the notice.

7 (d) Remedies of the court. If after hearing the court finds by clear and  
8 <sup>order</sup> convincing evidence cause as specified in par. (b) to ~~impose~~ a remedy under this  
9 paragraph, the court may do any of the following:

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

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

- 22 1. The guardianship is for a lesser period of time and that time has expired.
- 23 2. The child marries.
- 24 3. The child dies.

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

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

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

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

9           (b) *Termination on request of parent.* 1. A parent of the child may file a petition  
10 requesting that a guardianship order entered under sub. (3) (f) 2. (4), (5), or (7) be  
11 terminated. The petition shall allege facts sufficient to show that there has been a  
12 substantial change in circumstances since the last order affecting the guardianship  
13 was entered, that the parent is fit, willing, and able to carry out the duties of a  
14 guardian, and that termination of the guardianship would be in the best interests  
15 of the child.

16           2. The court shall hold a hearing on the petition unless written waivers of  
17 objections to termination of the guardianship are signed by all interested persons  
18 and the court approves the waivers. *parent requesting <sup>the</sup> termination shall provide*

19           3. If a hearing is to be held, by no less than 7 days before the date of the hearing  
20 the ~~court shall cause~~ notice of the hearing ~~to be provided~~ to the child, ~~his or her~~  
*the child's other parent* ~~parent~~, the guardian, and any other persons ~~as determined~~ *required* by the court. A copy of  
21 the request or proposal shall be attached to the notice. The court shall terminate the  
22 guardianship if the court finds that the parent has proved by clear and convincing  
23 evidence that he or she has remedied the unfitness, unwillingness, or inability to  
24 provide for the care, custody, and control of the child or other compelling facts and  
25

1 circumstances on which the guardianship was granted and that he or she is now fit,  
2 willing, and able to carry out the duties of a guardian and the court determines that  
3 termination of the guardianship would be in the best interests of the child.

4 **SECTION 29.** 48.977 (2) (a) of the statutes is amended to read:

5 48.977 (2) (a) That the child has been adjudged to be in need of protection or  
6 services under s. 48.13 ~~(1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or~~  
7 ~~(11m)~~ or 938.13 ~~(4) or (12)~~, or has been adjudged delinquent under s. 938.12, and been  
8 placed, or continued in a placement, outside of his or her home pursuant to one or  
9 more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.34, 938.345, 938.357,  
10 938.363, or 938.365 or, that the child has been so adjudged and placement of the child  
11 in the home of a guardian under this section has been recommended under s. 48.33  
12 (1) or 938.33 (1), or that the child has had a guardian of the person appointed for him  
13 or her under ch. 54, 2009 stats., or ch. 880, 2003 stats., and is placed in the home of  
14 the guardian.

15 **SECTION 30.** 48.977 (2) (e) of the statutes is amended to read:

16 48.977 (2) (e) That the child's parent is neglecting, refusing, or unable to carry  
17 out the duties of a guardian or is not meeting the conditions established in the court  
18 order described in par. (a) for the safe return of the child to the home or, if the child  
19 has 2 parents, both parents are neglecting, refusing or unable to carry out the duties  
20 of a guardian those duties or are not meeting those conditions.

21 **SECTION 31.** 48.977 (2) (f) of the statutes is amended to read:

22 48.977 (2) (f) That the agency primarily responsible for providing services to  
23 the child under a court order has made reasonable efforts to make it possible for the  
24 child to return to his or her home, while assuring that the child's health and safety  
25 are the paramount concerns, but that reunification of the child with the child's

1 parent or parents is unlikely or contrary to the best interests of the child and that  
 2 further reunification efforts are unlikely to be made or are contrary to the best  
 3 interests of the child or that the agency primarily responsible for providing services  
 4 to the child under a court order has made reasonable efforts to prevent the removal  
 5 of the child from his or her home, while assuring the child's health and safety, but that  
 6 continued placement of the child in the home would be contrary to the welfare of the  
 7 child, except that the court is not required to find that the agency has made those  
 8 reasonable efforts with respect to a parent of the child if any of the circumstances  
 9 specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the  
 10 findings specified in this paragraph on a case-by-case basis based on circumstances  
 11 specific to the child and shall document or reference the specific information on  
 12 which those findings are based in the guardianship order. A guardianship order that  
 13 merely references this paragraph without documenting or referencing that specific  
 14 information in the order or an amended guardianship order that retroactively  
 15 corrects an earlier guardianship order that does not comply with this paragraph is  
 16 not sufficient to comply with this paragraph. This paragraph does not apply to a  
 17 child who is placed in the home of a guardian under ch. 54, 2009 stats., or ch. 880,  
 18 2003 stats., and who is not receiving services from an agency under a court order.

19 **SECTION 32.** 48.977 (4) (b) 3. of the statutes is amended to read:

20 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection  
 21 or services under s. 48.13 ~~(1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or~~  
 22 ~~(11m)~~ or 938.13 ~~(4), (4m), (5), (8), (9), (10), (10m), (11), or~~ or was adjudicated delinquent under s. 938.12, and the  
 23 dates on which the child has been placed, or continued in a placement, outside of his  
 24 or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,  
 25 48.365, ~~938.34~~, 938.345, 938.357, 938.363, or 938.365; or, if the child has been so

strike



1 adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1) in  
2 which placement of the child in the home of the person is recommended; or, if the  
3 child has had a guardian of the person appointed for him or her under ch. 54, 2009  
4 stats., or ch. 880, 2003 stats., the date on which the child was placed in the home of  
5 the guardian.

6 **SECTION 33.** 48.977 (4) (b) 6. of the statutes is amended to read:

7 48.977 (4) (b) 6. A statement of whether the child may be subject to s. 48.028  
8 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may  
9 be subject to s. 48.028 or that act, the names and addresses of the child's Indian  
10 custodian, if any, and Indian tribe, if known.

11 **SECTION 34.** 48.977 (4) (c) 2. of the statutes is amended to read:

12 48.977 (4) (c) 2. Except as provided in subd. 2m., service shall be made by 1st  
13 class mail at least 7 days before the hearing or by personal service at least 7 days  
14 before the hearing ~~or, if with reasonable diligence a party specified in subd. 1. cannot~~  
15 ~~be served by mail or personal service, service shall be made by publication of a notice~~  
16 ~~published as a class 1 notice under ch. 985. In determining which newspaper is likely~~  
17 ~~to give notice as required under s. 985.02 (1), the petitioner shall consider the~~  
18 ~~residence of the party, if known, or the residence of the relatives of the party, if~~  
19 ~~known, or the last-known location of the party. Service is considered to be made by~~  
20 proof that the petition and notice under subd. 1. were mailed to the last-known  
21 address of the recipient, by proof of personal delivery of that petition and notice, or,  
22 if the recipient is an adult, by the written admission of service of the person served.

23 **SECTION 35.** 48.977 (4) (cm) 1m. of the statutes is created to read:

Insert  
4)-5

1 48.977 (4) (cm) 1m. If a man who has been given notice under par. (c) 1. appears  
2 at the hearing, alleges that he is the father of the child, and states that he wishes to  
3 establish the paternity of the child, s. 48.299 (6) applies.

4 SECTION 36. 48.977 (4) (i) of the statutes is amended to read:

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

9 SECTION 37. 48.977 (8) of the statutes is amended to read:

10 48.977 (8) ~~RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS~~ OTHER GUARDIANSHIP  
11 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian  
12 appointed under s. 48.976, ch. 54, 2009 stats., or ch. 880, 2003 stats.

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

15 SECTION 38. 48.978 (2) (a) 1. of the statutes is amended to read:

16 48.978 (2) (a) 1. A parent who has legal custody of a child may file a petition  
17 for the judicial appointment of a standby guardian of the person or estate or both of  
18 the child under this subsection. A parent may include in the petition the nomination  
19 of an alternate standby guardian for the court to appoint if the person nominated as  
20 standby guardian is unfit, unwilling, or unable to serve as the child's guardian or if  
21 the court determines that appointment of the person nominated as standby guardian  
22 as the child's guardian is not in the best interests of the child. Subject to subds. 2.  
23 and 3., if a petition is filed under this subdivision, the petition shall be joined by each  
24 parent who has legal custody of the child.

SECTION 39. 48.978 (2) (a) 2. of the statutes is amended to read:

1           48.978 (2) (a) 2. If a parent who has legal custody of a child cannot with  
2 reasonable diligence locate the other parent who has legal custody of the child, the  
3 parent may file a petition under subd. 1. without ~~the~~ that other parent joining in the  
4 petition and, if the parent filing the petition submits proof satisfactory to the court  
5 of that reasonable diligence, the court may grant the petition.

6           **SECTION 40.** 48.978 (2) (a) 3. of the statutes is amended to read:

7           48.978 (2) (a) 3. If a parent who has legal custody of a child can locate the other  
8 parent who has legal custody of the child, but that other parent ~~refuses~~ fails to join  
9 in the petition or ~~indicates~~ to indicate that he or she is ~~unwilling or unable~~ fit, willing,  
10 and able to exercise the duty and authority of guardianship, the parent may file a  
11 petition under subd. 1. without ~~the~~ that other parent joining in the petition and, if  
12 the parent filing the petition submits proof satisfactory to the court of that ~~refusal,~~  
13 ~~unwillingness or inability~~ failure, the court may grant the petition.

14           **SECTION 41.** 48.978 (2) (b) 7. of the statutes is amended to read:

15           48.978 (2) (b) 7. If a parent of the child cannot with reasonable diligence locate  
16 the other parent of the child, a statement that the child has no parent, other than the  
17 petitioner, who is fit, willing, and able to exercise the duties and authority of  
18 guardianship and who, with reasonable diligence, can be located and a statement of  
19 the efforts made to locate the other parent.

20           **SECTION 42.** 48.978 (2) (b) 8. of the statutes is amended to read:

21           48.978 (2) (b) 8. If a parent of the child can locate the other parent who has legal  
22 custody of the child, but that other parent ~~refuses~~ fails to join in the petition or  
23 ~~indicates~~ to indicate that he or she is ~~unwilling or unable~~ fit, willing, and able to  
24 exercise the duty and authority of guardianship, a statement that the child has no  
25 parent, other than the petitioner, who is fit, willing, and able to exercise the duty and

1 authority of guardianship and a statement that the nonpetitioning parent has  
 2 refused ~~does not have legal custody of the child and~~ has failed to join in the petition  
 or has indicated to indicate that he or she is unwilling or unable fit, willing, and able  
 to exercise the duty and authority of guardianship.

5 SECTION 43. 48.978 (2) (b) 11. of the statutes is amended to read:

6 48.978 (2) (b) 11. A statement of whether the child may be subject to s. 48.028  
 7 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may  
 8 be subject to s. 48.028 or that act, the names and addresses of the child's Indian  
 9 custodian, if any, and Indian tribe, if known.

10 SECTION 44. 48.978 (2) (d) 1m. of the statutes is created to read:

11 48.978 (2) (d) 1m. If a man who has been given notice under par. (c) 1. appears  
 at the hearing, alleges that he is the father of the child, and states that he wishes to  
 establish the paternity of the child, s. 48.299 (6) applies.

14 SECTION 45. 48.978 (2) (e) 2. of the statutes is amended to read:

15 48.978 (2) (e) 2. Whether the child has any parent, other than the petitioner,  
 16 who is fit, willing, and able to exercise the duty and authority of guardianship.

17 SECTION 46. 48.978 (2) (e) 4. of the statutes is amended to read:

18 ~~48.978 (2) (e) 4. If a parent who has legal custody of the child has refused failed~~  
 19 ~~to join in the petition, whether that refusal failure is unreasonable.~~

20 SECTION 47. 48.978 (2) (f) 2. of the statutes is amended to read:

21 48.978 (2) (f) 2. That the child has no parent, other than the petitioner, who is  
 22 fit, willing, and able to exercise the duty and authority of guardianship.

23 SECTION 48. 48.978 (2) (f) 4. of the statutes is amended to read:

24 48.978 (2) (f) 4. That, if a parent who has legal custody of the child has refused  
 25 failed to join in the petition, the refusal failure was unreasonable.

④ SE (#.RP) 48.978 (2)(f) 4.

Insert  
44-44

Insert  
44-13

Insert  
44-19

repealed

X

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