



State of Wisconsin
2011 - 2012 LEGISLATURE

IN 319

Today (from BL no changes)



LRB-1762/RS
GMM:cjs:rs

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stays

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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only changes
are @ on page
18

1 AN ACT to repeal 48.978 (2) (e) 4., 48.978 (2) (f) 4. and 938.345 (4); to renumber
2 and amend 54.56, 54.57 and 808.075 (4) (f) 3.; to amend 48.02 (8), 48.023
3 (intro.), 48.023 (3), 48.023 (4), 48.09 (5), 48.14 (2) (b), 48.14 (11), 48.185 (2),
4 48.235 (1) (c), 48.255 (1) (cm), 48.255 (1m) (d), 48.299 (4) (a), 48.299 (4) (b),
5 48.299 (6) (intro.), 48.299 (6) (d), 48.299 (7), 48.345 (intro.), 48.345 (3) (a), 48.368
6 (1), 48.42 (1) (d), 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (2) (a), 48.977 (2)
7 (e), 48.977 (2) (f), 48.977 (4) (b) 3., 48.977 (4) (b) 5., 48.977 (4) (b) 6., 48.977 (4)
8 (c) 2., 48.977 (4) (i), 48.977 (6) (c), 48.977 (7) (b) 3., 48.977 (7) (d) 3., 48.977 (8),
9 48.978 (2) (a) 1., 48.978 (2) (a) 2., 48.978 (2) (a) 3., 48.978 (2) (b) 6., 48.978 (2)
10 (b) 7., 48.978 (2) (b) 8., 48.978 (2) (b) 10., 48.978 (2) (b) 11., 48.978 (2) (e) 1.,
11 48.978 (2) (e) 2., 48.978 (2) (f) 1., 48.978 (2) (f) 2., 48.978 (2) (f) 5., 48.978 (3) (b)
12 2., 48.978 (3) (e) 1., 48.978 (3) (e) 3., 48.978 (3) (g) 3., 48.978 (3) (g) 4., 48.978 (3)
13 (g) 5., 48.978 (7), 49.32 (1) (am), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18. c., 54.01 (10),
14 54.10 (1), 54.52 (1), 55.03 (1), 55.08 (1) (b), 55.08 (2) (a), 55.10 (4) (intro.), 115.76
15 (12) (b) 2., 118.125 (2) (L), 146.82 (2) (a) 9. a., 146.82 (2) (a) 9. c., 214.37 (4) (k)

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

Analysis by the Legislative Reference Bureau

INTRODUCTION

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

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

2. When a child who has been adjudged to be in need of protection or services under the Children's Code on any grounds other than on the grounds of relinquishment of custody of not having been immunized as required by law, 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, debilitation, or death of the parent.

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

This bill removes guardianships of the persons of children from the chapter of the statutes governing guardianships generally and instead creates a new provision in the Children's Code that may be used for the appointment of a guardian of the person of a child. The bill also makes certain changes relating to protection or services guardianships, standby guardianships, and protective placement of children.

THE BILL

Types of guardianships

Full guardianships. Under the bill, the juvenile court may appoint a guardian to be a child's full guardian when the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or when other

compelling facts and circumstances demonstrate that a full guardianship is necessary.

Under current law, a full guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare. Those duties and authority include: 1) the authority to consent to marriage, enlistment in the U.S. Armed Forces, major medical, psychiatric, and surgical treatment, and to obtaining a driver's license; 2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child; 3) the right and duty of reasonable visitation of the child; and 4) the rights and responsibilities of legal custody, which rights and responsibilities include the right and duty to protect, train, and discipline the child and to provide food, shelter, legal services, education, and ordinary medical and dental care for the child.

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

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

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

Temporary guardianships. Under the bill, the juvenile court may appoint a guardian to be a child's temporary guardian when the child's particular situation, including the inability of the child's parent to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian. The order appointing a temporary guardian must specify the authority of the guardian, which must be limited to those acts that are reasonably related to the reasons for the appointment as specified in the petition for temporary

guardianship. A temporary guardianship may not exceed 180 days, but may be extended for one additional 180-day period for good cause shown. A temporary guardianship ceases on expiration of that period or on termination of the situation of the child that was the cause of the temporary guardianship.

Emergency guardianships. Under the bill, the juvenile court may appoint a guardian to be a child's emergency guardian when the child's welfare requires the immediate appointment of an emergency guardian. The order appointing an emergency guardian must specify the authority of the guardian, which must be limited to those acts that are reasonably related to the reasons for the appointment as specified in the petition for emergency guardianship. An emergency guardianship may not exceed 60 days and ceases on expiration of that period or on termination of the situation of the child that was the cause of the emergency guardianship.

Procedures for appointment of full, limited, or temporary guardian

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

For purposes of a petition for guardianship of a child, "interested person" means: 1) the child, if 12 years of age or over, and the child's guardian ad litem and counsel, if any; 2) the child's parent, 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:

1. Personally, or through a trained designee, meet with or observe 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 would be a suitable guardian 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, 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.

Disposition. At the conclusion of the fact-finding and dispositional hearing, the juvenile court must do one of the following, unless the juvenile court adjourns the hearing: 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.

Adjournment; proposed guardian unfit or not in best interests. If at the conclusion of the fact-finding and dispositional hearing the juvenile court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence, but that the proposed guardian is not fit, willing, and able to serve as the guardian of the child or that appointment of the proposed guardian as the child's guardian is not in the best interests of the child, the juvenile court may, in lieu of granting a disposition dismissing the petition, adjourn the hearing for not more than

30 days, request the petitioner or any other party to nominate a new proposed guardian, and order the GAL to report to the juvenile court concerning the suitability of the new proposed guardian to serve as the guardian of the child.

Procedures for appointment of emergency guardian

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

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

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

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

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 child's parent and guardian; 3) the county of venue, if the county has an interest in the guardianship; 4) if the child is an Indian child, the child's tribe; and 5) 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 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 was entered, that the parent is fit, willing, and able to carry out the duties of a guardian, and that termination of the guardianship would be in the best interests of the child. The juvenile court must hold a hearing on the petition, unless written waivers of objections to termination of the guardianship are signed by all interested persons and the juvenile court approves the waivers. The juvenile court must terminate the guardianship if the juvenile court finds that the parent has proved by clear and convincing evidence that he or she has remedied the unfitness, unwillingness, or inability to provide for the care, custody, and control of the child or the compelling facts and circumstances on which the guardianship was granted and that he or she is now fit, willing, and able to carry out the duties of a guardian and the juvenile court determines that termination of the guardianship would be in the best interests of the child.

Protection or services guardianships

Under the current Children's Code, a protection or services guardianship may be ordered when a child who has been adjudged to be in need of protection or services under the Children's Code on any grounds other than the grounds of relinquishment of custody or of not having been immunized as required by law, 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 who has been adjudged to be in need of protection or services under the Children's Code on the grounds of relinquishment of custody or of not having been immunized as required by law, a child who has been adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of truancy from home or school, being a school dropout, or having committed a delinquent act while under ten years of age, and a child ten years of age or over who has been adjudged delinquent. The bill also permits such a guardianship to be ordered not only when the child's parent is neglecting, refusing, or unable to carry out the duties of a

guardian but also when the child's parent is not meeting the conditions established in a juvenile court order for the safe return of the child to the home.

Under current law, service of a petition for a protection or services guardianship and notice of hearing on the petition may be made by 1st class mail, by personal service or, if with reasonable diligence a party cannot be served by mail or by personal 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 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: 1) that there is a significant risk that the petitioner will become incapacitated or debilitated or die within two years after the petition was filed; 2) that, if a parent has refused to join in the petition, the refusal was unreasonable; and 3) that the person nominated as guardian is willing and able to act as standby guardian.

This bill changes the findings that the juvenile court must make before the juvenile court may appoint a standby guardian by: 1) eliminating the two-year window for significant risk of incapacitation, debilitation, or death and instead requiring the juvenile court to find that that the petitioner has a physical or mental impairment or a physical illness, disease, or injury and that there is a significant risk that the petitioner will become incapacitated or debilitated or die as a result of that impairment, illness, disease, or injury; 2) eliminating altogether the finding that a parent's refusal to join in the petition was unreasonable; and 3) requiring a finding that a person is *fit*, willing, and able to act as standby guardian.

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.

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.

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

16 48.023 (4) The rights and responsibilities of physical custody and legal custody,
17 including the right to change the residence of the child from this state to another
18 state, except when physical custody or legal custody has been vested in another

1 person or when the child is under the supervision of the department of corrections
2 under s. 938.183, 938.34 (4h), (4m) or (4n), or 938.357 (4) or the supervision of a
3 county department under s. 938.34 (4d) or (4n).

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

5 48.09 (5) By the district attorney or, if designated by the county board of
6 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,
7 48.976, or 48.977. If the county board transfers this authority to or from the district
8 attorney on or after May 11, 1990, the board may do so only if the action is effective
9 on September 1 of an odd-numbered year and the board notifies the department of
10 administration of that change by January 1 of that odd-numbered year.

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

12 48.14 (2) (b) The appointment and removal of a guardian of the person for a
13 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977,
14 and 48.978 and ~~ch. 54~~ and for a child found to be in need of protection or services
15 under s. 48.13 because the child is without parent or guardian.

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

17 48.14 (11) Granting visitation privileges under s. ~~54.56~~ 48.976 (11).

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

19 48.185 (2) In an action under s. 48.41, venue shall be in the county where the
20 birth parent or child resides at the time that the petition is filed. Venue for any
21 proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under subch. VIII
22 or s. 48.976 when the child has been placed outside the home pursuant to a
23 dispositional order under s. 48.345 ~~or~~, 48.347, or 938.345 shall be in the county where
24 the dispositional order was issued, unless the child's county of residence has
25 changed, or the parent of the child or the expectant mother of the unborn child has

1 resided in a different county of this state for 6 months. In either case, the court may,
2 upon a motion and for good cause shown, transfer the case, along with all appropriate
3 records, to the county of residence of the child, parent, or expectant mother.

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

5 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is
6 the subject of a proceeding to terminate parental rights, whether voluntary or
7 involuntary, for a child who is the subject of a contested adoption proceeding, and for
8 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

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

10 48.235 (3) (c) In addition to any other duties and responsibilities required of
11 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of
12 a proceeding under s. 48.976 shall do all of the following unless granted leave by the
13 court not to do so:

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

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

24 3. Attend all court proceedings relating to the guardianship, present evidence
25 concerning the best interests of the child, if necessary, and make clear and specific

1 recommendations to the court concerning the best interests of the child at every stage
2 of the proceedings.

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

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

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

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

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

2 48.255 (**1m**) (d) Whether the unborn child, when born, may be subject to s.
3 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the
4 unborn child may be subject to s. 48.028 or that act, the name and address of the
5 Indian tribe in which the unborn child may be eligible for affiliation when born, if
6 known.

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

8 48.299 (**4**) (a) Chapters 901 to 911 shall govern the presentation of evidence at
9 the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978
10 (2) (e) and (3) (f) 2.

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

12 48.299 (**4**) (b) Except as provided in s. 901.05, neither common law nor
13 statutory rules of evidence are binding at a hearing for a child held in custody under
14 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a
15 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing
16 about changes in placement, revision of dispositional orders, extension of
17 dispositional orders or termination of guardianship orders entered under s. 48.976,
18 48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall
19 admit all testimony having reasonable probative value, but shall exclude
20 immaterial, irrelevant or unduly repetitious testimony or evidence that is
21 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has
22 demonstrable circumstantial guarantees of trustworthiness. The court shall give
23 effect to the rules of privilege recognized by law. The court shall apply the basic
24 principles of relevancy, materiality and probative value to proof of all questions of

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

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

4 48.299 (6) (intro.) If a man who has been given notice under s. 48.27 (3) (b) 1.,
5 48.976 (3) (b) 1., 48.977 (4) (c) 1., or 48.978 (2) (c) 1. appears at any hearing for which
6 he received the notice, alleges that he is the father of the child, and states that he
7 wishes to establish the paternity of the child, all of the following apply:

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

9 48.299 (6) (d) The court may stay the proceedings under this chapter pending
10 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
11 determines that the paternity proceedings will not unduly delay the proceedings
12 under this chapter and the determination of paternity is necessary to the court's
13 disposition of the child ~~if the child is found to be in need of protection or services~~
14 proceeding or if the court determines or has reason to know that the paternity
15 proceedings may result in a finding that the child is an Indian child and in a petition
16 by the child's parent, Indian custodian, or tribe for transfer of the proceeding to the
17 jurisdiction of the tribe.

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

19 48.299 (7) If a man who has been given notice under s. 48.27 (3) (b) 1., 48.976
20 (3) (b) 1., 48.977 (4) (c) 1., or 48.978 (2) (c) 1. appears at any hearing for which he
21 received the notice but does not allege that he is the father of the child and state that
22 he wishes to establish the paternity of the child or if no man to whom such notice was
23 given appears at a hearing, the court may refer the matter to the state or to the
24 attorney responsible for support enforcement under s. 59.53 (6) (a) for a

1 determination, under s. 767.80, of whether an action should be brought for the
2 purpose of determining the paternity of the child.

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

4 **48.345 Disposition of child or unborn child of child expectant mother**
5 **adjudged in need of protection or services.** (intro.) If the judge finds that the
6 child is in need of protection or services or that the unborn child of a child expectant
7 mother is in need of protection or services, the judge shall enter an order deciding one
8 or more of the dispositions of the case as provided in this section under a care and
9 treatment plan, except that the order may not place any child not specifically found
10 under this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled,
11 mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that
12 exclusively ~~treat~~ treats those categories of children, and the court may not place any
13 child expectant mother of an unborn child in need of protection or services outside
14 of the child expectant mother's home unless the court finds that the child expectant
15 mother is refusing or has refused to accept any alcohol or other drug abuse services
16 offered to her or is not making or has not made a good faith effort to participate in
17 any alcohol or other drug abuse services offered to her. The dispositions under this
18 section are as follows:

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

20 48.345 (3) (a) The home of a parent ~~or~~, other relative, or guardian of the child,
21 except that the judge may not designate the home of a parent ~~or~~, other relative, or
22 guardian of the child as the child's placement if the parent ~~or~~, other relative, or
23 guardian has been convicted under s. 940.01 of the first-degree intentional homicide,
24 or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child,
25 and the conviction has not been reversed, set aside or vacated, unless the judge

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

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

5 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41
6 or 48.415 or an appeal from a judgment terminating or denying termination of
7 parental rights is filed during the year in which a dispositional order under s. 48.355,
8 an extension order under s. 48.365, a voluntary agreement for placement of the child
9 under s. 48.63, or a guardianship order under ch. 54, 2009 stats., or ch. 880, 2003
10 stats., or s. 48.976 or 48.977 or ch. 54 is in effect, the dispositional or extension order,
11 voluntary agreement, or guardianship order shall remain in effect until all
12 proceedings related to the filing of the petition or an appeal are concluded.

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

14 48.42 (1) (d) A statement of whether the child may be subject to s. 48.028 or the
15 federal Indian & Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be
16 subject to s. 48.028 or that act, the names of the child's Indian custodian, if any, and
17 tribe, if known.

18 SECTION 22. 48.62 (2) of the statutes is amended to read:

19 48.62 (2) A relative or a guardian of a child who provides care and maintenance
20 for the child is not required to obtain the license specified in this section. The
21 department, county department, or licensed child welfare agency as provided in s.
22 48.75 may issue a license to operate a foster home to a relative who has no duty of
23 support under s. 49.90 (1) (a) and who requests a license to operate a foster home for
24 a specific child who is either placed by court order or who is the subject of a voluntary
25 placement agreement under s. 48.63. The department, a county department, or a

as affected by 2011 Wisconsin Act 87

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or a person delegated care and custody of a child under s. 48.979

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1 licensed child welfare agency may, at the request of a guardian appointed under s.
2 48.976, 48.977, or 48.978, ch. 54, 2009 stats., or ch. 880, 2003 stats., license the
3 guardian's home as a foster home for the guardian's minor ward who is living in the
4 home and who is placed in the home by court order. Relatives with no duty of support
5 and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2009 stats., or
6 ch. 880, 2003 stats., who are licensed to operate foster homes are subject to the
7 department's licensing rules.

8 **SECTION 23.** 48.831 (1) of the statutes is amended to read:

9 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment
10 of a guardian of a child who does not have a living parent if a finding as to the
11 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~
12 s. 48.976 applies to the appointment of a guardian for a child who does not have a
13 living parent for all other purposes. An appointment of a guardian of the estate of
14 a child who does not have a living parent shall be conducted in accordance with the
15 procedures specified in ch. 54.

16 **SECTION 24.** 48.831 (1m) (e) of the statutes is amended to read:

17 48.831 (1m) (e) A guardian appointed under s. 48.976, ch. 54, 2009 stats., or
18 ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court
19 under s. 48.976 (10), 54.54 (1), 2009 stats., or s. 880.17 (1), 2003 stats.

20 **SECTION 25.** 48.976 of the statutes is created to read:

21 **48.976 Appointment of guardian of the person of a child. (1)**

22 DEFINITIONS. In this section:

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

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

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

3 b. The child's parent, guardian, legal custodian, and physical custodian.

4 c. Any person who has filed a declaration of paternal interest under s. 48.025,
5 who is alleged to the court to be the father of the child, or who may, based on the
6 statements of the mother or other information presented to the court, be the father
7 of the child.

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

9 e. If the child has no living parent, any individual nominated to act as fiduciary
10 for the child in a will or other written instrument that was executed by a parent of
11 the child.

12 f. If the child is receiving or in need of any public services or benefits, the county
13 department or, in a county having a population of 750,000 or more, the department
14 that is providing the services or benefits, through district attorney, corporation
15 counsel, or other officials designated under s. 48.09.

16 g. If the child is an Indian child, the Indian child's Indian custodian and Indian
17 tribe.

18 h. Any other person that the court may require.

19 2. For purposes of proceedings subsequent to an order for guardianship of a
20 child, any of the following:

21 a. The child, if 12 years of age or over, the child's guardian ad litem, and the
22 child's counsel.

23 b. The child's parent and guardian.

1 c. The county of venue, through the district attorney, corporation counsel, or
2 other official designated under s. 48.09, if the county has an interest in the
3 guardianship.

4 d. If the child is an Indian child, the Indian child's tribe.

5 e. Any other person that the court may require.

6 (b) "Party" means the person petitioning for the appointment of a guardian for
7 a child or any interested person other than a person who is alleged to the court to be
8 the father of the child or who may, based on the statements of the mother or other
9 information presented to the court, be the father of the child.

10 (2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY. (a) *Appointment*. 1. This
11 section may be used for the appointment of a guardian of the person for a child. An
12 appointment of a guardian of the estate of a child shall be conducted under the
13 procedures specified in ch. 54. If the court assigned to exercise jurisdiction under this
14 chapter has jurisdiction over a proceeding for the appointment of a guardian of the
15 person for a child or continuing jurisdiction over such a guardianship and the court
16 assigned to exercise probate jurisdiction has jurisdiction over a proceeding for the
17 appointment of a guardian of the estate of the child or continuing jurisdiction over
18 such a guardianship, the court assigned to exercise jurisdiction under this chapter
19 may order those proceedings or guardianships to be consolidated under the
20 jurisdiction of the court assigned to exercise jurisdiction under this chapter. Upon
21 such consolidation, the court assigned to exercise jurisdiction under this chapter
22 shall order all records relating to the guardianship of the estate of the child to be
23 transferred to the court assigned to exercise jurisdiction under this chapter and that
24 court shall retain those records as required under SCR chapter 72. This section does

1 not prohibit a person from petitioning a court under s. 48.831, 48.977, or 48.978 for
2 the appointment of a guardian of the person of a child.

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

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

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

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

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

1 2. A guardian appointed under sub. (3) (f) 2. shall also immediately notify the court
2 that appointed the guardian of any change in the address of the guardian or child and
3 shall make an annual report to that court on the condition of the child. The report
4 shall include the location of the child, the health condition of the child, and any
5 recommendations regarding the child.

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

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

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

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

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

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

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

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

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

24 5. If the petitioner is requesting a limited guardianship, the facts and
25 circumstances establishing that the child's parents need assistance in providing for

1 the care, custody, and control of the child and a statement of the specific duties and
2 authority under s. 48.023 sought by the petitioner for the proposed guardian and the
3 specific parental rights and duties that the petitioner seeks to have transferred.

4 6. If the petitioner is requesting a temporary guardianship, the facts and
5 circumstances establishing that the child's particular situation, including the
6 inability of the child's parents to provide for the care, custody, and control of the child
7 for a temporary period of time, requires the appointment of a temporary guardian;
8 the reasons for the appointment of a temporary guardian; and the powers requested
9 for the temporary guardian.

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

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

15 9. The information required under s. 822.29 (1).

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

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

1 would change the placement of the child from the home of his or her parent or Indian
2 custodian to a placement outside that home, a statement as to whether the new
3 placement is in compliance with the order of placement preference under s. 48.028
4 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance
5 with that order, specific information showing good cause, as described in s. 48.028
6 (7) (e), for departing from that order.

7 12. Whether the petitioner is aware of any guardianship or other related
8 proceeding involving the child that is pending in another court and, if so, the details
9 of the guardianship or related proceeding.

10 13. If the child has been adjudged to be in need of protection or services under
11 s. 48.13 or 938.13 or has been adjudged delinquent under s. 938.12, and is subject to
12 a court order under s. 48.345, 48.357, 48.363, 48.365, 938.34, 938.345, 938.357,
13 938.363, or 938.365, and the petition filed under this subsection requests a change
14 in the placement of the child or a revision of the order, the information that is
15 required to be included in a request for a change in placement under s. 48.357 (2m)
16 (a) or 938.357 (2m) (a), whichever is applicable, or a request for a revision of the order
17 under s. 48.363 (1) (b) or 938.363 (1) (b), whichever is applicable.

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

23 2. A notice shall be in writing. A copy of the petition and any other required
24 document shall be attached to the notice. Except as provided in subd. 3., notice shall
25 be delivered in person or by 1st class mail. Notice is considered to be given by proof

1 of personal delivery, by proof that the notice was mailed to the last-known address
2 of the recipient, or, if the recipient is an adult, by the written admission of service of
3 the person served.

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

13 (c) *Statement by proposed guardian.* At least 96 hours before the hearing under
14 par. (d), the proposed guardian shall submit to the court a sworn and notarized
15 statement as to the number of persons for whom the proposed guardian is
16 responsible, whether as a parent, guardian, or legal custodian, as to the proposed
17 guardian's income, assets, debts, and living expenses, and as to whether the
18 proposed guardian is currently charged with or has been convicted of a crime or has
19 been determined under s. 48.981 (3) (c) to have abused or neglected a child. If the
20 proposed guardian is currently charged with or has been convicted of a crime or has
21 been determined under s. 48.981 (3) (c) to have abused or neglected a child, he or she
22 shall include in the sworn and notarized statement a description of the
23 circumstances surrounding the charge, conviction, or determination.

24 (d) *Hearing.* 1. The initial hearing on a petition for guardianship, other than
25 a petition for emergency guardianship under sub. (5), shall be heard within 45 days

1 after the filing of the petition. At the hearing the court shall first determine whether
2 any party wishes to contest the petition. If the petition is not contested, the court
3 shall immediately proceed to a fact-finding and dispositional hearing, unless an
4 adjournment is requested. If the petition is contested or if an adjournment is
5 requested, the court shall set a date for a fact-finding and dispositional hearing that
6 allows reasonable time for the parties to prepare but is not more than 30 days after
7 the initial hearing. The court shall hold the fact-finding and dispositional hearing
8 at the time specified or set by the court under this subdivision, at which any party
9 may present evidence, including expert testimony, and argument relating to the
10 allegations in the petition.

11 2. If the petition is contested, any party may request, or the court may propose
12 on its own motion, that an investigation be conducted to determine whether the child
13 is a proper subject for guardianship and whether the proposed guardian would be a
14 suitable guardian for the child. If the court determines that such an investigation
15 is necessary and that the welfare of the child demands such an investigation, the
16 court may order the county department, a licensed child welfare agency, or, in a
17 county having a population of 750,000 or more, the department or an agency under
18 contract with the department to conduct such an investigation. The person
19 conducting the investigation shall file a report of its investigation with the court at
20 least 96 hours before the fact-finding and dispositional hearing. The parents of the
21 child and the proposed guardian shall reimburse the person conducting the
22 investigation for the cost of the investigation according to a fee schedule established
23 by the department based on ability to pay.

24 3. The proposed guardian and any proposed successor guardian shall be
25 physically present at the hearing unless the court excuses the attendance of either

1 or, for good cause shown, permits attendance by telephone. The child is not required
2 to attend the hearing, but if the child has nominated the proposed guardian, the child
3 shall provide to his or her guardian ad litem sufficient information for the guardian
4 ad litem to advise the court whether the nomination is in the best interests of the
5 child.

6 4. If a man who has been given notice under par. (b) 1. appears at the hearing,
7 alleges that he is the father of the child, and states that he wishes to establish the
8 paternity of the child, s. 48.299 (6) applies. The court may order a temporary
9 guardianship under sub. (4) pending the outcome of the paternity proceedings

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

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

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

18 3. If the child is an Indian child, the order of placement preference under s.
19 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as
20 described in s. 48.028 (7) (e), for departing from that order.

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

23 (f) *Disposition.* At the conclusion of the hearing under par. (d), the court shall
24 grant one of the following dispositions, unless the court adjourns the hearing under
25 par. (g):

1 1. A disposition dismissing the petition if the court finds that the petitioner has
2 not proved the allegations in the petition by clear and convincing evidence or
3 determines that appointment of the proposed guardian as the child's guardian is not
4 in the best interests of the child. Dismissal of a petition under this subdivision does
5 not preclude the court from referring the child to the intake worker for an intake
6 inquiry under s. 48.24.

7 2. A disposition ordering that the proposed guardian be appointed as the child's
8 full guardian under sub. (2) (c) 1., limited guardian under sub. (2) (c) 2., or temporary
9 guardian under sub. (2) (c) 3., if the court finds that the petitioner has proved the
10 allegations in the petition by clear and convincing evidence and determines that such
11 an appointment is in the best interests of the child. If the court orders the
12 appointment of a guardian for a child described in par. (a) 13. and the order changes
13 the placement of the child, the disposition shall include the applicable findings,
14 orders, statements, and determinations specified in s. 48.357 (2m) (c) or 938.357 (2m)
15 (c), whichever is applicable. The disposition may also designate an amount of
16 support to be paid by the child's parents and, subject to sub. (12), may include
17 reasonable rules of parental visitation, which rules the court shall determine in
18 accordance with the factors specified in s. 767.41 (5), as applicable. If the court
19 appoints the proposed guardian as the child's guardian, the court shall issue letters
20 of guardianship to the guardian.

21 (g) *Adjournment; proposed guardian unfit or not in best interests.* If at the
22 conclusion of the hearing under par. (d) the court finds that the petitioner has proved
23 the allegations in the petition, other than the allegation specified in par. (a) 8., by
24 clear and convincing evidence, but that the proposed guardian is not fit, willing, and
25 able to serve as the guardian of the child, or if the court finds that the petitioner has

1 so proved all of the allegations in the petition, but that appointment of the proposed
2 guardian as the child's guardian is not in the best interests of the child, the court may,
3 in lieu of granting a disposition dismissing the petition under par. (f) 1., adjourn the
4 hearing for not more than 30 days, request the petitioner or any other party to
5 nominate a new proposed guardian, and order the guardian ad litem to report to the
6 court concerning the suitability of the new proposed guardian to serve as the
7 guardian of the child.

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

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

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