

CHAPTER 48

CHILDREN'S CODE

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SUBCHAPTER I

GENERAL PROVISIONS

48.01 Title and legislative purpose. (1)

This chapter may be cited as "The Children's Code". This chapter shall be interpreted to effectuate the following express legislative purposes:

(a) To provide judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety.

(b) To provide for the care, protection and wholesome mental and physical development of children, preserving the unity of the family whenever possible.

(c) Consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation.

(d) To divert children from the juvenile justice system to the extent this is consistent with protection of children and the public safety.

(e) To respond to children's needs for care and treatment through community-based programs and to keep children in their homes whenever possible.

(f) To assure that children pending adoptive homes will be placed in the best homes available and protected from adoption by persons unfit to have responsibility for raising children.

(2) This chapter shall be liberally construed to effect the objectives contained in this section. The best interests of the child shall always be of paramount consideration, but the court shall also consider the interest of the parents or guardian of the child and the interests of the public.

History: 1977 c 354

Meaning of "best interests of the child" discussed. Adoption of Tachick, 60 W (2d) 540, 210 NW (2d) 865

The best interests of a child abandoned by its father prior to its birth require affirmance of the county court order terminating the father's parental rights. State ex rel. Lewis v. Lutheran Social Services, 68 W (2d) 36, 227 NW (2d) 643.

A juvenile court in the disposition of a case subsequent to an adjudication of delinquency, must consider not only the paramount factor of the child's best interests but also the interest of the parents or guardian and the interest of the public. In re Interest of J. K. (a minor), 68 W (2d) 426, 228 NW (2d) 713.

48.02 Definitions. In this chapter, unless otherwise defined:

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

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

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter.

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

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

(5) "Developmentally disabled" means having a developmental disability, as defined in s. 51.01 (5).

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

(7) "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children.

(8) "Guardian ad litem" means a lawyer admitted to practice in this state who is appointed to protect the interest of the child or an incompetent in a particular court proceeding.

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

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities and the provisions of any court order.

(13) "Parent" means either a biological parent or a parent by adoption. If the child is born out of wedlock but not subsequently legitimated or adopted, "parent" includes a person adjudged in a judicial proceeding to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(15) "Relative" means a parent, grandparent, brother, sister, first cousin, nephew, niece,

uncle or aunt. This relationship may be by consanguinity or direct affinity.

(16) "Secure detention facility" means a locked facility approved by the department under s. 46.16 for the secure, temporary holding in custody of children.

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

(18) "Trial" means a fact-finding hearing to determine jurisdiction.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449.

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

48.023 Guardianship. A person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and the duty to be concerned about the child's general welfare, including but not limited to:

(1) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.

(2) The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by this chapter.

(3) The right and duty of reasonable visitation of the child.

(4) The rights and responsibilities of legal custody except when legal custody has been vested in another person.

History: 1977 c. 354.

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a child born out of wedlock and not subsequently legitimated or adopted may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

(2) The declaration provided in sub. (1) may be filed at any time except after a termination of the natural father's rights under s. 48.425 or 48.43. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

(3) A copy of a declaration filed with the department under sub. (1) shall be sent to the mother at her last-known address. Nonreceipt of such copy shall not affect the validity of the declaration. The mother may send a written response to the declaration to the department, and the written response shall be filed with the declaration. Failure to send a written response shall not constitute an admission of the statements contained in the declaration.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.

History: 1973 c. 263.

The constitutional rights of a putative father to establish his parentage and assert parental rights. 58 MLR 175.

48.027 Child custody jurisdiction. All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 283.

SUBCHAPTER II

ORGANIZATION OF COURT

48.03 Time and place of court; absence or disability of judge; court of record. (1) The judge of a court assigned to exercise jurisdiction under this chapter shall set apart a time and place to hold court on juvenile matters.

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which elected, the judge shall receive expenses as provided under s. 753.073.

History: 1971 c. 46; 1977 c. 187 s. 135; 1977 c. 273, 449.

48.035 Court; Menominee and Shawano counties. Menominee county is attached to Shawano county for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and the office and functions of the judge of court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter of the circuit court for Menominee and Shawano counties shall serve in both counties. The county boards of Menominee county and Shawano county shall enter into an agreement on administration of this section and the prorating of expenditures involved, and for such purposes the county board of supervisors of Menominee county may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure

involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief judge of the judicial administrative district shall make the determination.

History: 1977 c. 449.

48.04 Employes of court. (1) If the county contains one or more cities of the 2nd or 3rd class, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, may appoint, by an instrument in writing, filed with the county clerk, a clerk of court for juvenile matters and such deputies as may be needed, who shall perform the duties of clerk and reporter of the court as directed by the judges. The clerk and deputies shall take and file the official oath and shall receive such salary as the county board determines.

History: 1977 c. 354, 449.

48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties having a population of 500,000 or more, the county board of supervisors shall provide the court with the services necessary for investigating and supervising cases by operating a children's court center under the supervision of a director who shall be appointed as provided in s. 46.21 (4) under the laws governing civil service in the county. The director is the chief administrative officer of the center and of the intake and probation sections and secure detention facilities of the center except as otherwise provided in this subsection. The director is charged with administration of the personnel and services of the sections and of the secure detention facilities, and is responsible for supervising both the operation of the physical plant and the maintenance and improvement of the buildings and grounds of the center. The center shall include investigative services for all children alleged to be in need of protection or services to be provided by the county department of social services, and the services of an assistant district attorney or assistant corporation counsel or both, who shall be assigned to the center to provide investigative as well as legal work in the cases.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for juvenile matters and the director shall be charged with executing the judicial policy. The chief judge or a designee shall direct and supervise the

work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court.

3. The county board of social services shall develop policies and establish necessary rules and regulations for the management and administration of the nonjudicial operations of the children's court center, but any such policy, rule or regulation is subject to adoption of a different policy, rule or regulation by the county board of supervisors by a majority of the members present and voting. The director of the center shall report and is responsible to the director of institutions and departments for the execution of all nonjudicial operational policies, rules and regulations governing the center, including activities of probation officers whenever they are not performing services for the court. The director of the center is also responsible for the preparation and submission to the county board of social services of the annual budget for the center except for the judicial functions or responsibilities which are delegated by law to the judge or judges and clerk of circuit court. The board shall make provision in the organization of the office of director for the devolution of the director's authority in the case of temporary absence, illness, disability to act or a vacancy in position and shall establish the general qualifications for the position. The board also has the authority to investigate, arbitrate and resolve any conflict in the administration of the center as between judicial and nonjudicial operational policy, rules and regulations, except that the final disposition of such conflicts is subject to the approval of the county board of supervisors by a majority of the members present and voting. The county board of social services does not have authority and may not assert jurisdiction over the disposition of any case or child after a written order is made under s. 48.21 or if a petition is filed under s. 48.25. All personnel of the intake and probation sections and of the secure detention facilities, shall be appointed under civil service by the director except that existing court service personnel having permanent civil service status may be reassigned to any of the respective sections within the center specified in this paragraph.

(am) All intake workers beginning employment after November 18, 1978 shall have such qualifications as are required of persons having comparable responsibilities under the county merit system.

(b) Notwithstanding par. (a), the county board of supervisors may institute changes in the administration of services to the children's court center in order to qualify for the maximum amount of federal and state aid as provided in sub. (4) and s. 49.52.

(2) **COUNTIES WITH A POPULATION UNDER 500,000.** In counties having less than 500,000 population, the county board of supervisors shall authorize the county social services department or court or both to provide intake services required by s. 48.067 and agency staff needed to carry out the objectives and provisions of this chapter under s. 48.069. All intake workers beginning employment after November 18, 1978 shall have those qualifications as are required of persons having comparable responsibilities under the county merit system. All such workers shall be governed in their intake work, including their responsibilities for recommending the filing of a petition and entering into an informal disposition, by general written policies which shall be formulated by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(3) The court or agency responsible for providing intake services under s. 48.067 shall specify one or more persons to provide intake services. If there is more than one such worker, one of the workers shall be designated as chief worker and shall supervise other workers.

(4) **STATE AID.** State aid to any county for court services under this section shall be at the same net effective rate that each county is reimbursed for county administration under s. 49.52.

History: 1971 c. 125; 1975 c. 39, 199, 302, 307, 422; 1977 c. 271; 1977 c. 354 ss. 10 to 14, 101; 1977 c. 447, 449.

48.065 Juvenile court commissioners.

(1) The board of supervisors of any county may authorize the chief judge of the judicial administrative district to appoint one or more part-time or full-time juvenile court commissioners who shall serve at the discretion of the chief judge. A juvenile court commissioner shall be licensed to practice law in this state and shall have been so licensed for at least 2 years immediately prior to appointment and shall have a demonstrated interest in the welfare of children. Law clerks, bailiffs and deputies shall be assigned to the court commissioner at the discretion of the chief judge.

(2) Under this chapter a juvenile court commissioner, if authorized to do so by a judge assigned to exercise jurisdiction under this chapter, may:

- (a) Issue summonses.
 - (b) Conduct hearings under s. 48.21 and thereafter order a child held in or released from custody.
 - (c) Conduct appearances under s. 48.243.
- (3)
- (d) Conduct plea hearings.
 - (e) Enter into consent decrees.

(f) Conduct prehearing conferences.

(g) Conduct all proceedings on petitions under s. 48.125.

(h) Perform such other duties, not in conflict with this chapter, as the judge assigned to exercise jurisdiction under this chapter may direct.

(3) The juvenile court commissioner may not:

(a) Conduct waiver hearings under s. 48.18.

(b) Conduct fact-finding or dispositional hearings except petitions under s. 48.125 or hearings on the termination of parental rights or on adoptions.

(c) Make dispositions other than approving consent decrees.

(4) When acting officially, the juvenile court commissioner shall sit at the courthouse or the usual court facility for juvenile matters. Any decision of the juvenile court commissioner shall be reviewed by the judge assigned to exercise jurisdiction under this chapter upon the request of any interested party.

History: 1977 c. 354, 449.

48.067 Powers and duties of intake workers. To carry out the objectives and provisions of this chapter but subject to its limitations, intake workers shall:

(1) Provide intake services 24 hours a day, 7 days a week, for the purpose of screening children taken into custody and not released under s. 48.20 (2);

(2) Interview, unless impossible, any child who is taken into physical custody and not released, and where appropriate interview other available concerned parties. If the child cannot be interviewed, the intake worker shall consult with the child's parent or a responsible adult. No child may be placed in a secure detention facility unless and until he or she has been interviewed in person by an intake worker.

(3) Determine whether the child shall be held under s. 48.205 and such policies as the judge shall promulgate under s. 48.06 (1) or (2);

(4) If the child is not released, determine where the child shall be held;

(5) Provide crisis counseling during the intake process when such counseling appears to be necessary;

(6) Receive referral information, conduct intake inquiries, make recommendations as to whether a petition should be filed, and enter into informal dispositions under such policies as the chief judge of the judicial administrative district promulgates under s. 48.06 (1) or (2);

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

(8) Make interim recommendations to the court concerning children awaiting final disposition under s. 48.355; and

(9) Perform any other functions ordered by the court, and assist the court or chief judge of the judicial administrative district in developing written policies or carrying out its other duties when the court or chief judge so requests.

History: 1977 c. 354, 449.

48.069 Powers and duties of disposition staff. (1) The staff of the department, the court or a county department of public welfare or social services, or a licensed child welfare agency designated by the court to carry out the objectives and provisions of this chapter shall:

(a) Supervise and assist a child pursuant to informal dispositions, a consent decree or order of the court.

(b) Offer family counseling.

(c) Make an affirmative effort to obtain necessary or desired services for the child and the child's family and investigate and develop resources toward that end.

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

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

(2) Licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested.

(3) The agency responsible for disposition staff may agree with the agency responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

(4) Disposition staff employed to perform the duties specified in sub. (1) after November 18, 1978 shall have the qualifications required under the county merit system.

History: 1977 c. 354.

48.07 Additional sources of court services. If the county board has complied with s. 48.06, the court may obtain supplementary services for investigating cases and providing supervision of cases from one or more of the following sources:

(1) STATE DEPARTMENT. The court may request the services of the department for cases with special needs which cannot adequately be provided by county services. The department may furnish such requested services, subject to s. 46.03 (18). When such services are requested the department shall provide, from the appropriation under s. 20.435 (4) (jc), such services only to the extent that the county provides funds to the department equal to the net cost the

department will incur as a result of providing the services requested.

(2) **LICENSED CHILD WELFARE AGENCY.** The court may request the services of a child welfare agency licensed under s. 48.60 in accordance with procedures established by that agency. The child welfare agency shall receive no compensation for these services but may be reimbursed out of funds made available to the court for the actual and necessary expenses incurred in the performance of duties for the court.

(3) **DEPARTMENT OF SOCIAL SERVICES IN POPULOUS COUNTIES.** In counties having a population of 500,000 or more, the director of the department of social services may be ordered by the court to provide services for furnishing emergency shelter care to any child whose need therefor, either by reason of need of protection and services or delinquency, is determined by the intake worker under s. 48.205. The court may authorize the director to appoint members of the director's department to furnish emergency shelter care services for the child. The emergency shelter care may be provided as specified in s. 48.207.

History: 1975 c. 39; 1977 c. 271, 354, 447.

48.08 Duties of person furnishing services to court. (1) It is the duty of each person appointed to furnish services to the court as provided in ss. 48.06 and 48.07 to make such investigations and exercise such discretionary powers as the judge may direct, to keep a written record of such investigations and to submit a report to the judge. Such person shall keep informed concerning the conduct and condition of the child under his supervision and shall report thereon as the judge directs.

(2) Each person designated to furnish services for the court under ss. 48.067 and 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking children into physical custody where the child comes voluntarily or is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

History: 1975 c. 302, 421; 1977 c. 354.

48.09 Representation of the interests of the public. The interests of the public shall be represented in proceedings under this chapter as follows:

(1) By the district attorney, in any matter arising under s. 48.12.

(2) By the district attorney or, if designated by the county board, by the corporation counsel, in any matter concerning a civil law violation arising under s. 48.125.

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

(4) By any appropriate person designated by the county board in any matter concerning a noncity ordinance violation arising under s. 48.125.

(5) By the district attorney or, if designated by the county board, by the corporation counsel, in any matter arising under s. 48.13.

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

History: 1977 c. 354.

48.10 Power of the judge to act as intake worker. The duties of the intake worker may be carried out from time to time by the judge at his or her discretion, but if a recommendation to file a petition is made, or an informal disposition is entered into, the judge shall be disqualified from participating further in the proceedings.

History: 1977 c. 354.

48.11 Advisory board. (1) The court may appoint a board of not more than 15 citizens of the county, known for their interest in the welfare of children, who shall serve without compensation, to be called the advisory board of the court. The members of the board shall hold office during the pleasure of the court. The duties of the board are:

(a) To advise and co-operate with the court upon all matters affecting the workings of this law and other laws relating to children, their care and protection.

(b) To familiarize themselves with the functions and facilities of the court under this law and to interpret to the public the work of the court.

(2) Nothing in this section shall be construed to require the court to open court records or to disclose their contents.

History: 1977 c. 449.

SUBCHAPTER III

JURISDICTION

48.12 Jurisdiction over children alleged to be delinquent. The court has exclusive jurisdiction, except as provided in ss. 48.17 and 48.18, over any child 12 years of age or older who is alleged to be delinquent because he or she has violated any federal or state criminal law.

History: 1971 c. 125; 1973 c. 90; 1977 c. 29, 354.

State may not delay charging child in order to avoid juvenile court jurisdiction. *State v. Becker*, 74 W (2d) 675, 247 NW (2d) 495.

Iron county juvenile court has jurisdiction of delinquency petitions based on violation of the Michigan criminal law by

children who are residents of and present in Iron county. 62 Atty. Gen. 229.

This section vests exclusive jurisdiction in the juvenile court over persons under 18 years of age who violate 66.054 (25), 1973 stats., [66.054 (22)] and 176.31, 1973 stats., which impose criminal penalties on a person under 18 years of age. 63 Atty. Gen. 95.

48.125 Jurisdiction over children alleged to have violated civil laws or ordinances.

The court has exclusive jurisdiction over any child alleged to have violated a law punishable by forfeiture or a county, town or other municipal ordinance, except as provided under s. 48.17.

History: 1977 c. 354.

48.13 Jurisdiction over children alleged to be in need of protection or services.

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (3) Who has been the victim of sexual or physical abuse including injury which is self-inflicted or inflicted by another by other than accidental means;
- (4) Whose parent or guardian signs the petition requesting jurisdiction and states that he or she is unable to care for, control or provide necessary special care or special treatment for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (6) Who is habitually truant from school;
- (7) Who is habitually truant from home and either the child or a parent signs the petition requesting jurisdiction and attests in court that reconciliation efforts have been attempted and have failed;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction and attests in court that he or she is in need of special care and treatment which the parent, guardian or legal custodian is unwilling to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (11) Who is suffering emotional damage for which the parent or guardian is unwilling to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal or outward aggressive behavior; or

(12) Who, being under 12 years of age, has committed a delinquent act as defined in s. 48.12.

History: 1977 c. 29, 354.

48.135 Referral of children to proceedings under chapter 51.

(1) If a child alleged to be delinquent or in need of protection or services is before the court and it appears that the child is developmentally disabled, mentally ill, alcoholic or drug dependent, the court as defined in ch. 51 may proceed under ch. 51.

(2) Admissions, placements or commitments of any child made in or to an inpatient facility as defined in s. 51.01 (10) shall be governed by ch. 51 or 55.

History: 1977 c. 354; 1977 c. 418 s. 928 (55) (c); 1977 c. 428 s. 6.

48.14 Jurisdiction over other matters relating to children. The court has exclusive jurisdiction over:

(1) The termination of parental rights to a minor in accordance with the provisions of ss. 48.40 to 48.43.

(2) The appointment and removal of a guardian of the person in the following cases:

(a) For a minor, where parental rights have been terminated under ss. 48.40 to 48.43; or

(b) The appointment and removal of a guardian of the person for a child under ss. 48.43 and 48.85 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

(3) The adoption of children, except in counties having a population of 500,000 or more.

(4) Proceedings under the interstate compact on juveniles under s. 48.991.

(5) Proceedings under chs. 51 and 55 which apply to minors.

(6) Consent to marry under s. 245.02.

(7) Appeals under s. 115.81.

History: 1975 c. 430; 1977 c. 354, 449.

48.15 Jurisdiction of other courts to determine legal custody.

Nothing contained in ss. 48.12, 48.13 and 48.14 shall deprive other courts of the right to determine the legal custody of children upon writs of habeas corpus or to determine the legal custody or guardianship of children if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under this chapter is paramount in all cases involving children alleged to come within the provisions of ss. 48.12, 48.13 and 48.14.

History: 1977 c. 449.

48.17 Jurisdiction over traffic and boating, civil law and ordinance violations. (1)

TRAFFIC VIOLATIONS. Except for ss. 342.06 (2) and 344.48 (1), and s. 346.67 when death or injury occurs, courts of criminal and civil jurisdiction shall have exclusive jurisdiction in proceedings against children 16 or older for violations of ss. 30.50 to 30.80, of chs. 341 to 350, and of traffic regulations as defined in s. 345.20. A child convicted of a traffic or boating offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except that the court may disregard any minimum period of incarceration specified for the offense.

(2) CIVIL LAW AND ORDINANCE VIOLATIONS.

Courts of civil jurisdiction have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter in proceedings against children aged 16 or older for violations of law punishable by forfeiture or violations of county, town or other municipal ordinances. The citation procedures described in ss. 23.50 to 23.85 and 66.119, respectively, may be used in such cases where applicable to adults charged with the same offense. If a citation is issued to a child, the issuing agency shall within 7 days notify the child's parent or guardian. If a court of civil jurisdiction finds that the child violated a law punishable by forfeiture or violated a municipal ordinance, it may enter any of the dispositional orders permitted under s. 48.343 (1), (2) or (5). If a child fails to pay the forfeiture imposed by the court of civil jurisdiction, the court shall not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 nor more than 90 days, or suspend the child's operating privilege, as defined in s. 340.01 (40), for not less than 30 nor more than 90 days. If a court of civil jurisdiction suspends a license under this section, it shall immediately take possession of the suspended license and forward it to the department which issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the first 30 days after the license is suspended, the suspension shall be reduced to the minimum period of 30 days. If it is paid thereafter, the court shall immediately notify the department, which shall thereupon return the license to the person.

History: 1971 c. 40, 278; 1975 c. 39; 1977 c. 354, 449.

48.18 Jurisdiction for criminal proceedings for children 16 or older; waiver hearing. (1)

If a child is alleged to have violated a state criminal law on or after his or her 16th birthday, the child or district attorney may apply to the court to waive its jurisdiction under

this chapter. The judge may initiate a petition for waiver if the judge disqualifies himself or herself from any future proceedings on the case.

(2) The waiver hearing shall be brought on by filing a petition alleging delinquency drafted under s. 48.255 and a petition for waiver of jurisdiction which shall contain a brief statement of the facts supporting the request for waiver.

(3) (a) The child shall be represented by counsel at the waiver hearing. Written notice of the time, place and purpose of the hearing shall be given to the child, any parent, guardian or legal custodian, and counsel at least 3 days prior to the hearing. Where parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the child shall have access to the social records and other reports consistent with s. 48.293.

(b) The child has the right to present testimony on his or her own behalf including expert testimony and has the right to cross-examine witnesses at the hearing.

(c) The child does not have the right to a jury at a hearing under this section.

(4) The judge shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive its jurisdiction.

(5) If prosecutive merit is found, the judge, after taking relevant testimony and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality and prior record of the child, including whether the child is a proper subject for commitment to a facility for the mentally ill or developmentally disabled, whether the child has been previously found delinquent, whether such delinquency involved the infliction of serious bodily injury, the child's motives and attitudes, the child's physical and mental maturity, the child's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or wilful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in circuit court.

(6) After considering the criteria under sub. (5), the judge shall state his or her finding with respect to the criteria on the record, and, if the judge determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the child or of the public to hear the case, the judge shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate criminal proceedings in the circuit court, and the circuit court thereafter has exclusive jurisdiction.

(7) Stenographic notes of the hearing shall be kept. No notes may be transcribed except upon order of the court.

(8) When waiver is granted, the child, if held in secure custody, shall be transferred to an appropriate officer or adult facility and shall be eligible for bail in accordance with chs. 968 and 969.

History: 1977 c. 354, 449.

Since juveniles receive the same Miranda warnings as adults, a confession made by a juvenile during custodial interrogation prior to his waiver into adult court is admissible in later adult proceedings. *Therhault v. State*, 66 W (2d) 33, 223 NW (2d) 850.

State may not delay charging child in order to avoid juvenile court jurisdiction. *State v. Becker*, 74 W (2d) 675, 247 NW (2d) 495.

Basic due process requirements for hearing discussed. In *Interest of D.H.* 76 W (2d) 286, 251 NW (2d) 196.

Juvenile waiver statute; delegation of legislative power to judiciary. *Zekas*, 1973 WLR 259.

48.185 Venue. Venue for any proceeding under ss. 48.12, 48.125, 48.13, 48.135, 48.14 and 48.18 may be in any of the following: the county where the child resides, the county where the child is present or, in the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred. Venue for any proceeding under s. 48.363 or 48.365 shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child or parent.

History: 1977 c. 354.

SUBCHAPTER IV

HOLDING A CHILD IN CUSTODY

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

(a) A warrant;

(b) A *capias* issued by a judge of the court assigned to exercise jurisdiction under this chapter in accordance with s. 48.28;

(c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody. The order shall specify that the child be held in custody under s. 48.207; or

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that:

1. A *capias* or a warrant for the child's apprehension has been issued in this state, or that the child is a fugitive from justice;

2. A *capias* or a warrant for the child's apprehension has been issued in another state;

3. The child is committing or has committed an act which if committed by an adult would be a crime;

4. The child has run away from his or her parents, guardian or legal or physical custodian;

5. The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary;

6. The child has violated the terms of court-ordered supervision;

7. The child has violated the conditions of an order under s. 48.21 (4); or

8. The child has violated a civil law or a local ordinance punishable by a forfeiture, provided that in any such case the child shall be released as soon as reasonably possible under s. 48.20 (2).

(2) When a child is taken into physical custody as provided in this section, an intake worker, or another at his or her direction, shall immediately attempt to notify the parent, guardian or legal custodian of the child by the most practical means and shall continue such attempt until the parent, guardian or legal custodian of the child is notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1977 c. 354, 449.

48.20 Release or delivery from custody.

(1) Children taken into custody shall be released from custody as soon as is reasonably possible.

(2) A person taking a child into custody shall make every effort immediately to release the child to the child's parent, guardian or legal custodian or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, may release the child to a responsible adult, and verbally counsel or warn as may be appropriate; or, in the case of a child 15 years of age or older, may release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or in the case of a runaway child, may release the child to a home authorized under s. 48.227.

(3) If the child is not released under sub. (2), the person shall deliver the child to the intake worker in a manner determined by the court and law enforcement agencies, stating in writing with supporting facts the reasons why the child was taken into physical custody and giving any child 12 years of age or older a copy of the statement in addition to giving a copy to the intake worker.

(4) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child into physical custody, the intake worker or other appropriate person shall deliver the child to a hospital as defined in s. 50.33 (1) (a) and (c) or physician's office.

(5) If the child is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial risk of physical harm to the child or to others, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

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

(7) When a child is interviewed by an intake worker, the intake worker shall inform the child of his or her right to counsel and, in the case of a child possibly involved in a delinquent act, the right against self-incrimination. The intake worker shall review the need to hold the child in custody and shall make every effort to release the child from custody under s. 48.205 and criteria promulgated under s. 48.06 (1) or (2). If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person,

if any, to whom the child was released. If a child is taken into custody, the intake worker may release the child to a parent, guardian or legal custodian, or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, release the child to a responsible adult; or, if a child is 15 years of age or older, release the child without immediate adult supervision.

(8) The intake worker shall base his or her decision to hold a child in custody on the criteria specified in s. 48.205 and criteria promulgated under s. 48.06 (1) or (2). If a child is held in custody, the intake worker shall notify the child's parent, guardian or legal custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian or legal custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, the right to counsel under s. 48.23 regardless of ability to pay, and the right to present and cross-examine witnesses at the hearing. If the parent, guardian or legal custodian is not immediately available, notice shall be given as soon as possible.

History: 1977 c. 354, 449.

48.205 Criteria for holding a child in physical custody. (1) A child may be held under s. 48.207, 48.208 or 48.209 if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will commit injury to the person or property of others or cause injury to himself or herself or be subject to injury by others;

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is unavailable, unwilling or unable to provide adequate supervision and care; or

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

(2) The criteria for holding a child in custody specified in this section shall govern the decision of all persons responsible for determining whether the action is appropriate.

History: 1977 c. 354.

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

- (a) The home of a parent or guardian.
- (b) The home of a relative.
- (c) A licensed foster home provided the placement does not violate the conditions of the license.
- (d) A nonsecure facility operated by a licensed child welfare agency.
- (e) A licensed private or public shelter care facility.
- (f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court and if the person has not had a foster home license refused, revoked or suspended within the last 2 years.
- (g) A hospital as defined in s. 50.33 (1) (a) and (c) or physician's office if the child is held under s. 48.20 (4).
- (h) A place listed in s. 51.15 (3) if the child is held under s. 48.20 (5).
- (i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20 (6).
- (k) A facility under s. 48.58.

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

(3) A child placed in protective custody under s. 48.981 may be held in a hospital, foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

History: 1977 c. 354, 355, 447.

48.208 Criteria for holding a child in a secure detention facility. A child may be held in a secure detention facility if the intake worker personally interviews the child and one of the following conditions applies:

(1) Probable cause exists to believe that the child has committed a delinquent act and either presents a substantial risk of physical harm to another person or a substantial risk of running away as evidenced by previous acts or attempts so as to be unavailable for a court hearing.

(2) Probable cause exists to believe that the child is a fugitive from another state and there has been no reasonable opportunity to return the child.

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such

secure custody is ordered by the judge in a protective order.

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 or by the judge or juvenile court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

(5) Probable cause exists to believe that the child has been adjudged or alleged to be delinquent and has run away from another county and would run away from nonsecure custody pending his or her return. A child may be held in secure custody under this subsection for no more than 24 hours unless an extension of 24 hours is ordered by the judge for good cause shown. Only one extension may be ordered by the judge.

History: 1977 c. 354.

48.209 Criteria for holding a child in a county jail. Subject to the provisions of s. 48.208, a county jail may be used as a secure detention facility if the criteria under either sub. (1) or (2) are met:

(1) There is no other secure detention facility approved by the department or a county which is available and:

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

(b) The child is held in a room separated and removed from incarcerated adults;

(c) The child is not held in a cell designed for the administrative or disciplinary segregation of adults;

(d) Adequate supervision is provided; and

(e) The judge reviews the status of the child every 3 days.

(2) The child presents a substantial risk of physical harm to other persons in the secure detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The provisions of sub. (1) (a) to (e) shall be met. The child shall be given a hearing and transferred only upon order of the judge.

(3) The restrictions of this section do not apply to the use of jail for a child waived to adult court.

History: 1977 c. 354.

48.21 Hearing for child in custody. (1)

HEARING; WHEN HELD. (a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or juvenile court commissioner within 24 hours of the time the decision to

hold the child was made, excluding Saturdays, Sundays and legal holidays. Except for a child taken into custody under s. 48.19 (1) (b) and (d) 7, by the time of the hearing a petition under s. 48.25 shall be filed. If no hearing has been held within 24 hours or if no petition has been filed at the time of the hearing, the child shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or juvenile court commissioner for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the judge or juvenile court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is unwilling or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. In the event of failure to file a petition within the 48-hour extension period provided for in this paragraph, the judge or juvenile court commissioner shall order the child's immediate release from custody.

(2) PROCEEDINGS CONCERNING RUNAWAY, TRUANT OR DELINQUENT CHILDREN. Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.12 or 48.13 (6), (7) or (12) shall be conducted according to this subsection.

(a) A child held in a nonsecure place of custody may waive in writing the hearing under this section. After any waiver, a hearing shall be granted upon the request of the child or any other interested party. Any child transferred to a secure detention facility shall thereafter have a hearing under this section.

(b) A copy of the petition shall be given to the child at or prior to the time of the hearing. If possible, prior notice of the hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the court to the child's parent, guardian and legal custodian and to the child.

(c) Prior to the commencement of the hearing, the child shall be informed by the judge or juvenile court commissioner of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 48.18 if applicable, the right to counsel under s. 48.23 regardless of ability to pay if the child is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the judge or juvenile

court commissioner, the right to confront and cross-examine witnesses and the right to present witnesses.

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

(3) PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES. Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.13 (1) to (5) or (8) to (11) shall be conducted according to this subsection.

(a) The parent, guardian or legal custodian may waive the hearing under this section. Agreement in writing of the child is required if he or she is over 12. After any waiver, a hearing shall be granted at the request of any interested party.

(b) If present at the hearing, a copy of the petition shall be given to the parent, guardian or legal custodian, and to the child if he or she is over 12 years of age, before the hearing begins. A person designated by the court shall diligently attempt to give prior actual notice of the time, place and purpose of the hearing to the parent, guardian and legal custodian and to the child if he or she is over 12 years of age.

(c) The court may order that the child be excluded from the hearing if it determines that it would be contrary to the child's best interest to be present and the child's counsel or guardian ad litem does not object.

(d) Prior to the commencement of the hearing, the parent, guardian or legal custodian shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to counsel under s. 48.23 regardless of ability to pay, the right to confront and cross-examine witnesses and the right to present witnesses.

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

(4) **CONTINUATION OF CUSTODY.** If the judge or juvenile court commissioner finds that the child should be continued in custody under the criteria of s. 48.205, he or she shall enter one of the following orders:

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

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

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

(6) **AMENDMENT OF ORDER.** An order placing a child under sub. (4) (a) on conditions specified in this section may at any time be amended, with notice, so as to return the child to another form of custody for failure to conform to the conditions originally imposed. A child may be transferred to secure custody if he or she meets the criteria of s. 48.208.

(7) **INFORMAL DISPOSITION.** If the judge or juvenile court commissioner determines that the best interests of the child and the public are served, he or she may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.

History: 1977 c. 354, 447.

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

48.22 Establishment of secure detention facilities and shelter care facilities. (1)

(a) The county board of one county may establish a secure detention facility or a shelter care facility or both or 2 or more counties may join together and establish a secure detention facility or a shelter care facility or both in accordance with ss. 46.16 and 46.20.

(b) In counties having a population of less than 500,000, the policies of the secure detention facility or shelter care facility shall be determined by the judge of the court assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district or, in the case of a secure detention facility or shelter care facility established by 2 or more counties, by a committee of the judges of the courts in the participating counties assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district.

(c) In counties having a population of 500,000 or more, the nonjudicial operational policies of the secure detention facility and the detention section of the children's court center shall be established by the county board of public welfare as specified in s. 48.06 (1), and the execution thereof shall be the responsibility of the director of the children's court center.

(2) (a) Plans for the secure detention facility, juvenile portion of the county jail or shelter care facility shall be approved by the department. The plans shall be designed to protect the health, safety and welfare of the children in these facilities.

(b) If the department approves, the secure detention facility may be a part of a public building in which there is a jail or other facility for the detention of adults if it is so physically segregated from the jail or other facility that it may be entered without passing through areas where adults are confined and that children detained in the facility cannot communicate with or view adults confined therein.

(c) A shelter facility shall not be in the same building as a facility for the detention of adults and shall be used for the temporary care of children.

(3) (a) In counties having a population of less than 500,000, public secure detention facilities and public shelter care facilities shall be in the charge of a superintendent. The judge of the court assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district or, where 2 or more counties operate joint public secure detention facilities or public shelter care facilities, the committee of judges of the courts assigned to exercise jurisdiction under this chapter with the approval of the chief judge of the judicial administrative district shall appoint the superintendent and other necessary personnel for the care and education of the children in secure detention or shelter care facilities, subject to civil service regulations in counties having civil service.

(b) In counties having a population of 500,000 or more, the director of the children's court center under the direction of the county board of public welfare as specified in s. 48.06 (1) shall be in charge of and responsible for public secure detention facilities, the secure detention section of the center and the personnel assigned to this section, including a detention supervisor or superintendent. The director of the children's court center may also serve as superintendent of detention if the county board of supervisors so determines.

(5) A county board, or 2 or more county boards jointly, may contract with privately operated shelter care facilities or home detention

programs for purchase of services. The county board may delegate this authority to county social services departments.

(6) (a) On or after July 1, 1978, a county shall be reimbursed by the state for 50% of the per capita cost of care of the children who are in a shelter care facility. Reimbursement shall be limited to the first 20 days of care per episode and shall not exceed \$15 per day. Payments shall be made from the appropriation under s. 20.435 (4) (dj).

(b) Eligibility for state reimbursement under par. (a) shall be subject to the following conditions:

1. A plan demonstrating the need for shelter care in that location and the need for the number of beds proposed, and outlining specific methods for the reduction of the number of children held in jail or detention shall be submitted to and approved by the department;

2. The facility shall be licensed under s. 48.66;

3. The county in which the facility is located shall have a 24-hour-a-day screening service for all children taken into custody;

4. The facility may not receive any other form of federal or state reimbursement for the per capita cost of care of children in the shelter care portion of the facility's program.

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

History: 1977 c. 29, 194; 1977 c. 354 ss. 39, 52; 1977 c. 418 ss. 305, 305m, 928 (55) (c); 1977 c. 447, 449.

48.225 State-wide plan for detention homes. The department shall assist counties in establishing detention homes under s. 48.22 by developing and promulgating a state-wide plan for the establishment and maintenance of suitable detention facilities reasonably accessible to each court.

History: 1977 c. 354 s. 54; 1977 c. 447 s. 210.

48.227 Approval of runaway homes; procedures. (1) The judge may utilize homes licensed under ss. 48.48 and 48.75 for purposes of temporary care and housing of runaway children without consent of the child's parent, guardian or legal custodian. The homes may house and care for such children until such time as:

(a) A child returns to his or her parent, guardian or legal custodian; or

(b) The court, after a hearing, orders the child's removal.

(2) Any person who operates a home under sub. (1) and licensed under ss. 48.48 and 48.75, when engaged in sheltering a runaway child without consent of the child's parent, guardian or legal custodian, shall notify the intake worker

of the presence of the child in the home within 12 hours. The intake worker shall notify the parent, guardian or legal custodian as soon as possible of the child's presence in that home. The child shall not be removed from the home except with the approval of the court under sub. (3). This section does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) If the child sheltered in a home under sub. (2) does not return to the parent, guardian or legal custodian within 72 hours after the time of first arrival at the home, the parent, guardian, legal custodian, runaway home or child may request a hearing, in which case the court shall schedule a hearing under s. 48.21.

(4) No person operating an approved or licensed home in compliance with this section is subject to civil or criminal liability by virtue of false imprisonment.

(6) This section does not preclude the right of the child to be released immediately upon his or her request to the custody of a parent, guardian or legal custodian.

History: 1977 c. 354.

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

(a) Any child alleged to be delinquent under s. 48.12 or held in a secure detention facility shall be represented by counsel at all stages of the proceedings, but a child 15 years of age or older may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not make a disposition under s. 48.34 (4m) or transfer jurisdiction over the child to adult court.

(b) If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court; but a child 15 years of age or older may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver. If the child is not represented by counsel at the fact-finding hearing and subsequent proceedings, the court may not place the child outside his or her home in making a disposition under s. 48.345 or in approving a change of placement under s. 48.357 or an extension of placement under s. 48.365. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(c) Any child subject to the jurisdiction of the court assigned to exercise jurisdiction under

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

(d) If a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, the court shall appoint legal counsel or a guardian ad litem for the child.

(2) RIGHT OF PARENTS TO COUNSEL. (a) Whenever a child is alleged to be in need of protection or services under s. 48.13, or is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel; but no such parent may waive counsel. A minor parent petitioning for the voluntary termination of parental rights shall be represented by a guardian ad litem. If a proceeding involves a contested adoption or the involuntary termination of parental rights, any parent 18 years old or older who appears before the court shall be represented by counsel; but the parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(b) No child alleged to be in need of protection or services under s. 48.13 may be placed outside his or her home under s. 48.345 unless counsel has been appointed for a nonpetitioning parent. The parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(3) POWER OF THE COURT TO REQUIRE REPRESENTATION AND APPOINT GUARDIANS AD LITEM. At any time, upon request or on its own motion, the court may:

(a) Require that a child or any interested party be represented by counsel, but the child or interested party may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(b) Appoint a guardian ad litem for a child or any interested party.

(3m) GUARDIANS AD LITEM FOR ABUSED OR NEGLECTED CHILDREN. The court shall appoint a guardian ad litem for each child subject to a judicial proceeding regarding child abuse or neglect. The guardian ad litem for the child shall not be the same as counsel for the alleged abuser or neglecter or any governmental or social agency involved.

(4) ROLE OF THE STATE PUBLIC DEFENDER; OTHER METHODS FOR PROVIDING COUNSEL. In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court, except for situations arising under sub. (2) where the child entitled to representation is a

parent; and counsel is not knowingly and voluntarily waived; and it appears that the child is unable to afford counsel in full, or the child so indicates; the court shall refer the child to the state public defender for an indigency determination and appointment of counsel under ch. 977; but if there is no state public defender program in the county, the court shall determine whether the child is indigent, if so shall appoint counsel, and shall provide for counsel's reimbursement in any manner suitable to the court. In any situation under sub. (2) in which a parent is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the state public defender for an indigency determination and appointment of counsel under ch. 977; but if there is no state public defender program in the county, the court shall determine whether the parent is indigent, and if so shall appoint counsel, and shall provide for counsel's reimbursement in any manner suitable to the court. The court may appoint a guardian ad litem in any appropriate matter. In any other situation under this section in which a person has a right to be represented by counsel or guardian ad litem or is provided counsel or guardian ad litem at the discretion of the court, competent and independent counsel or guardian ad litem shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay.

(5) COUNSEL OF OWN CHOOSING. Regardless of any provision of this section, any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

(6) DEFINITION. For the purposes of this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem for any party in the same proceeding.

History: 1977 c. 354, 355, 447, 449.

48.235 Guardian ad litem. A guardian ad litem appointed under this chapter shall be appointed under s. 879.23. On order of the court, the guardian ad litem shall be allowed reasonable compensation to be paid by the county in which the proceeding is held. The guardian ad litem has none of the rights of a general guardian. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party,

may be appointed guardian ad litem in that proceeding.

History: 1977 c. 354

SUBCHAPTER V

PROCEDURE

48.24 Receipt of Jurisdictional Information; Intake Inquiry. (1) Information indicating that a child should be referred to the court as delinquent, in need of protection or services or in violation of a civil law or a county, town or municipal ordinance shall be referred to the intake worker, who shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the child and of the public with regard to any action to be taken.

(2) As part of the intake inquiry, intake conferences may be conducted with notice to the child, parent, guardian and legal custodian. No child or other person may be compelled to appear at any conference, produce any papers or visit any place by an intake worker.

(3) If the intake worker determines as a result of the intake inquiry that the child should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 48.09 file a petition.

(4) If the intake worker determines as a result of the intake inquiry that the case should be subject to an informal disposition, or should be closed, the intake worker shall so proceed. If a petition has been filed, informal disposition may not occur or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 48.09, or is dismissed by the judge.

(5) The intake worker shall recommend that a petition be filed or shall enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel or other official under s. 48.09 shall receive written notice of such action. A notice of informal disposition of an alleged delinquency case shall include a summary of facts surrounding the allegation and a list of prior intake referrals and dispositions. With respect to petitioning a child to be in need of protection or services, information received more than 40 days before filing the petition may be included to establish a condition or pattern which, together with information received within the 40-day period, provides a basis for conferring jurisdiction on the court. The judge shall dismiss

with prejudice any petition which is referred after the time limits specified in this subsection. Notwithstanding the requirements of this section, the district attorney may initiate a delinquency petition under s. 48.25 within 20 days after notice that the case has been closed or that an informal disposition has been made. If an informal disposition is entered into within 40 days but is subsequently canceled, the intake worker may recommend that a petition be filed within 40 days of the date of cancellation. The judge shall dismiss with prejudice any such petition which is not referred within the 40-day period.

(6) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

History: 1975 c. 430; 1977 c. 354.

48.243 Basic rights: duty of intake worker. (1) Before conferring with the parent or child during the intake inquiry, the intake worker shall personally inform a child alleged to have committed a delinquent act, and parents and children over 12 years of age who are the focus of an inquiry regarding the need for protection or services, that the referral may result in a petition to the court and:

(a) What allegations could be in the petition;

(b) The nature and possible consequences of the proceedings including the provisions of s. 48.17 or 48.18 if applicable;

(c) The right to remain silent and the fact that in a delinquency proceeding the silence of the child shall not be adversely considered by the court or jury, although silence of any party may be relevant in any nondelinquency proceeding;

(d) The right to confront and cross-examine those appearing against them;

(e) The right to counsel under s. 48.23;

(f) The right to present and subpoena witnesses;

(g) The right to a jury trial; and

(h) The right to have the allegations of the petition proved beyond a reasonable doubt unless the child comes within the court's jurisdiction under s. 48.125 or is alleged to be in need of protection or services under s. 48.13 (3), (7), (9) or (10) or unless the proceeding is for the termination of parental rights, in which case the standard shall be clear and convincing evidence.

(2) This section does not apply if the child was present at a hearing under s. 48.21.

(3) If the child has not had a hearing under s. 48.21 and was not present at an intake conference under s. 48.24, the judge or juvenile court commissioner shall summon the child, parent, guardian or legal custodian as appropriate to an appearance where he or she shall be informed of

basic rights under this section. This subsection does not apply to cases of informal disposition under s. 48.245.

History: 1977 c 354

48.245 Informal disposition. (1) The intake worker may enter into a written agreement with all parties which imposes informal disposition under this section if the intake worker has determined that neither the interests of the child nor of the public require filing of a petition for circumstances relating to ss. 48.12 to 48.14. Informal disposition shall be available only if the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist and upon consent of the child, parent, guardian and legal custodian.

(2) Informal disposition may provide that the child appear with a parent, guardian or legal custodian for counseling and advice, or that the child and a parent, guardian and legal custodian abide by such obligations as will tend to ensure the child's rehabilitation, protection or care. Informal disposition may not include any form of residential placement and may not exceed 6 months.

(3) The obligations imposed under an informal disposition and its effective date shall be set forth in writing. The child and a parent, guardian and legal custodian shall receive a copy, as shall any agency providing services under the agreement.

(4) The intake worker shall inform the child and the child's parent, guardian and legal custodian in writing of their right to object at any time to the fact or terms of the informal disposition, and if the objection arises the intake worker may alter the terms of the agreement or recommend to the district attorney or corporation counsel that a petition be filed.

(5) Informal disposition may be terminated at any time upon the request of the child, parent, guardian or legal custodian.

(6) An informal disposition arising out of an alleged delinquent act is terminated if the district attorney files a delinquency petition within 20 days after receipt of notice of the informal disposition under s. 48.24 (5). In such case statements made to the intake worker during the intake inquiry are inadmissible.

(7) If at any time during the period of informal disposition the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the informal disposition and recommend to the district attorney or corporation counsel that a petition be filed. In delinquency cases notice of cancellation shall be sent to the district attorney who may initiate a delinquency petition within

20 days after notice that the informal disposition has been canceled.

(8) If the obligations imposed under the informal disposition are met, the intake worker shall so inform the child and a parent, guardian and legal custodian in writing, and no petition may be filed on the charges that brought about the informal disposition nor may the charges be the sole basis for a petition under ss. 48.13 to 48.14.

(9) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

History: 1977 c 354.

48.25 Petition: authorization to file. (1) A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. If a petition is to be filed, it shall be prepared, signed and filed by the district attorney if the proceeding is under s. 48.12, or by the district attorney, city attorney or corporation counsel or other appropriate official specified under s. 48.09 if the proceeding is under s. 48.125 or 48.13. The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 48.14 in a manner specified by the court. Counsel or a guardian ad litem for the child, parent, relative or guardian may file a petition under s. 48.13 or 48.14.

(2) In delinquency cases where there has been a case closure or informal disposition, the petition shall be filed within 20 days of receipt of the notice of closure or informal disposition. Failure to file within 20 days invalidates the petition and affirms the case closure or informal disposition. If a petition is filed within 20 days, the district attorney shall notify the parties to the agreement and the intake worker as soon as possible.

(3) If the district attorney, city attorney or corporation counsel or other appropriate official specified in s. 48.09 refuses to file a petition, any person may request the judge to order that the petition be filed and a hearing shall be held on the request. The judge may order the filing of the petition on his or her own motion. The matter may not be heard by the judge who orders the filing of a petition.

(4) Section 939.74 applies to delinquency petitions filed under this chapter.

History: 1977 c. 354; 447.

48.255 Petition; form and content. (1) A petition initiating proceedings under this chapter shall be entitled, "In the interest of (child's

name), a person under the age of 18", and shall set forth with specificity:

(a) The name, birth date and address of the child.

(b) The names and addresses of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative.

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

(d) If violation of a criminal statute, an ordinance or another law is alleged, the citation to the appropriate law or ordinance as well as facts sufficient to establish probable cause that an offense has been committed and that the child named in the petition committed the offense.

(e) If the child is alleged to come within the provisions of s. 48.13 (1) to (11) or 48.14, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the child is in need of supervision, services, care or rehabilitation.

(2) If any of the facts in sub. (1) (a), (b) or (c) are not known or cannot be ascertained by the petitioner, the petition shall so state.

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

(4) A copy of the petition shall be given to the child if the child is 12 years of age or older or alleged to have committed a delinquent act and to the parents, guardian, legal custodian and physical custodian.

History: 1977 c. 354.

48.263 Amendment of petition. (1) Except as provided in s. 48.255 (3), no petition, process or other proceeding may be dismissed or reversed for any error or mistake if the case and the identity of the child named in the petition may be readily understood by the court; and the court may order an amendment curing the defects.

(2) With reasonable notification to the interested parties and prior to the taking of a plea under s. 48.30, the petition may be amended at the discretion of the court or person authorizing the petition. After the taking of a plea, if the child is alleged to be delinquent, the court may allow amendment of the petition to conform to the proof if such amendment is not prejudicial to the child. If the child is alleged to be in need of

protection or services, the petition may be amended provided any objecting party is allowed a continuance for a reasonable time.

History: 1977 c. 354.

48.27 Notice; summons. (1) After a petition has been filed relating to facts concerning a situation specified under ss. 48.12, 48.125 and 48.13, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the person who has legal custody of the child to appear personally, and, if the court so orders, to bring the child before the court at a time and place stated.

(2) Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

(3) The court shall also notify, under s. 48.273, the child and any parent, guardian and legal custodian of the child of all hearings involving the child except hearings on motions and probable cause for which notice need only be provided to the child and his or her counsel. Where parents entitled to notice have the same place of residence, notice to one shall constitute notice to the other. The first such written notice to any interested party shall have attached to it a copy of the petition.

(4) The notice shall:

(a) Contain the name of the child, and the nature, location, date and time of the hearing.

(b) Advise the child and any other party, if applicable, of his or her right to legal counsel regardless of ability to pay.

(5) Notice as specified in this section shall be provided to any person who has filed a declaration of interest under s. 48.025 and any person who has been adjudged to be the biological father of the child in a judicial proceeding unless the biological father's rights have been terminated.

(6) When a proceeding is initiated under s. 48.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court, consistent with applicable governing statutes.

History: 1977 c. 354.

48.273 Service of summons or notice; expense. (1) Service of summons or notice required by s. 48.27 may be made by mailing a copy thereof to the persons summoned or notified. If the persons fail to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted and service shall be made personally by delivering to the persons a copy of the summons or notice; except that if the court is satisfied that it is impracticable to serve the summons or notice personally, it may make an order providing for the service of the summons

or notice by certified mail addressed to the last-known addresses of the persons. Personal service shall be made at least 72 hours before the time of the hearing; mail shall be sent at least 7 days before the time of the hearing if within the state or 14 days if outside the state.

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

(3) The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under ss. 48.12 to 48.14, shall be a charge on the county when approved by the court.

History: 1977 c. 354.

48.275 Parents contribution to cost of court services. If the court finds a child to be delinquent under s. 48.12, in violation of a civil law or ordinance under s. 48.125 or in need of protection or services under s. 48.13, the court shall order the parents of the child to contribute toward the expense of post-adjudication services to the child the proportion of the total amount which the court finds the parents are able to pay.

History: 1977 c. 29, 354, 449.

48.28 Failure to obey summons; *capias*. If any person summoned fails without reasonable cause to appear, he may be proceeded against for contempt of court. In case the summons cannot be served or the parties served fail to obey the same, or in any case when it appears to the court that the service will be ineffectual a *capias* may be issued for the parent or guardian or for the child.

History: 1977 c. 354 s. 41.

48.29 Substitution of judge. The child, or the child's parent, guardian or legal custodian, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named therein. In a proceeding under s. 48.12 or 48.13 (12), only the child may request a substitution of the judge. After a request has been filed, the judge shall be disqualified to act in relation to the matter and shall promptly request assignment of another judge under s. 251.182. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than

one judge. This section shall not apply to proceedings under s. 48.21.

History: 1977 c. 354.

48.293 Discovery. (1) Copies of all peace officer reports, including but not limited to the officer's memorandum and witnesses' statements, shall be made available upon request to counsel or guardian ad litem prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 48.09. The child, through counsel or guardian ad litem, is the only party who shall have access to the reports in proceedings under ss. 48.12, 48.125 and 48.13 (12). The identity of a confidential informant may be withheld pursuant to s. 905.10.

(2) All records relating to a child which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party, upon demand and upon presentation of releases where necessary, at least 48 hours before the proceeding. Persons entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel not to disclose specified items in the materials to the child or the parent if the court reasonably believes that the disclosure would be harmful to the interests of the child. Sections 971.23 to 971.25 shall be applicable in all delinquency proceedings under this chapter except the court shall establish the timetable for s. 971.23 (3) and (8).

History: 1977 c. 354.

48.295 Physical, psychological, mental or developmental examination. (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination, the court may order any child coming within its jurisdiction to be examined as an outpatient by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a masters degree in social work or another related field of child development, in order that the child's physical, psychological, mental or developmental condition may be considered in the disposition of the case. The court may also order an examination of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court. The expenses of an examination, if approved by the court, shall be paid by the county.

(2) If there is probable cause to believe that the child has committed the alleged offense and is not competent to proceed, or upon entry of a plea under s. 48.30 (4) (c) the court shall order

the child to be examined by a psychiatrist or licensed psychologist. The expenses of an examination, if approved by the court, shall be paid by the county. Evaluation shall be made on an outpatient basis unless the child presents a substantial risk of physical harm to the child or others; or the child, parent or guardian, and legal counsel or guardian ad litem consent to an inpatient evaluation. Any inpatient evaluation shall be for a specified period no longer than is necessary to complete the evaluation.

(3) If the child or a parent objects to a particular physician, psychiatrist, licensed psychologist or other expert as required under this section, the court shall appoint a different physician, psychiatrist, psychologist or other expert as required under this section.

History: 1977 c 354

48.297 Motions before trial. (1) Any motion which is capable of determination without trial of the general issue may be made before trial.

(2) Defenses and objections based on defects in the institution of proceedings, lack of probable cause on the face of the petition, insufficiency of the petition or invalidity in whole or in part of the statute on which the petition is founded shall be raised not later than 10 days after the plea hearing or be deemed waived. Other motions capable of determination without trial may be brought any time before trial.

(3) Motions to suppress evidence as having been illegally seized or statements illegally obtained shall be made before fact-finding on the issues. The court may entertain the motion at the fact-finding hearing if it appears that a party is surprised by the attempt to introduce such evidence and that party waives jeopardy. Only the child may waive jeopardy in cases under s. 48.12, 48.125 or 48.13 (12).

(4) If the child is not represented by counsel at a hearing, any statement by a child alleged to be delinquent shall be inadmissible at the hearing unless the child affirms the statement before the court or unless the person seeking to introduce the statement brings a motion before the court and proves beyond a reasonable doubt the child's voluntary and intelligent waiver of the right against self-incrimination and right to have counsel present. The motion shall be brought before the fact-finding hearing commences.

(5) If the child is in custody and the court grants a motion to dismiss based upon a defect in the petition or in the institution of the proceedings, the court may order the child continued in custody for not more than 48 hours pending the filing of a new petition.

(6) A motion required to be served on a child may be served upon his or her attorney of record.

History: 1977 c 354

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

48.30 Plea hearing. (1) The hearing to determine the child's plea to a petition under s. 48.12, 48.125 or 48.13 (12), or to determine whether any party wishes to contest an allegation that the child is in need of protection or services, shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days of the filing of a petition for a child who is not being held in secure custody or within 10 days of the filing of a petition for a child who is being held in secure custody.

(2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial must be made before the end of the plea hearing or be waived. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

(3) If a petition alleges that a child is in need of protection or services under s. 48.13 (1) to (11), the nonpetitioning parties and the child, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition.

(4) If a delinquency petition under s. 48.12, a civil law violation petition under s. 48.125, or a petition alleging that a child is in need of protection or services under s. 48.13 (12) is filed, the child may plead as follows:

(a) Admit some or all of the facts alleged in the petition; however, such a plea is an admission only of the commission of the acts and does not constitute an admission of delinquency or in need of protection or services;

(b) Deny the facts alleged in the petition. If the child stands mute or refuses to plead, the court shall direct entry of a denial of the facts alleged in the petition on the child's behalf; or

(c) State that he or she is not responsible for the acts alleged in the petition by reason of mental disease or defect. This plea may be joined with an admission of par. (a) or a denial under par. (b).

(5) If the child enters a plea of not responsible by reason of mental disease or mental defect the court shall order an examination under s. 48.295 and set a date for hearing on the issue:

(a) The hearing shall be held no more than 10 days from the plea hearing for a child held in

secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

(b) If there is a finding that the child is not responsible by reason of mental disease or defect, the court may order the filing of a petition under ch. 51. If there is no such finding, the child shall enter a plea under sub. (4) (a) or (b), and the court shall proceed under sub. (6) or (7).

(6) If the petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days from the plea hearing for the child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing.

(7) If the petition is contested, the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days from the plea hearing for a child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

(8) Before accepting an admission of the alleged facts in a petition, the court shall:

(a) Address the parties present including the child personally and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(b) Establish whether any promises or threats were made to elicit a plea and alert unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(c) Make such inquiries as satisfactorily establishes that there is a factual basis for the child's plea or parent and child's admission.

History: 1977 c. 354, 355, 447.

48.305 Hearing upon the involuntary removal of a child.

If a child is removed from the physical custody of the child's parent or guardian without the consent of the parent or guardian, the court shall schedule a plea hearing and fact-finding hearing within 30 days of a request from the parent or guardian from whom custody was removed. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent or guardian.

History: 1977 c. 354.

48.31 Fact-finding hearing. (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations of the petition are

supported beyond a reasonable doubt except for petitions under s. 48.125 or 48.13 (3), (7), (10) and (11) and petitions to terminate parental rights, which shall be proved by clear and convincing evidence.

(2) The hearing shall be to the court unless the child, parent, guardian or legal custodian exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. Chapters 756 and 805 shall govern the selection of jurors except that ss. 972.03 and 972.04 shall apply in cases in which the juvenile is alleged to be delinquent under s. 48.12. Chapters 901 to 911 shall govern the admissibility of evidence at the fact-finding hearing. At the conclusion of the hearing, the court or jury shall make a determination of the facts. If the court finds that the child is not within the jurisdiction of the court or the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

(3) The hearing shall be reported and the record may be transcribed upon the request of any party with the approval of the court or under s. 48.47 (2).

(4) The court shall make findings of fact and conclusions of law relating to the allegations of a petition filed under s. 48.13 (1) to (11). In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court shall not find that the child is suffering serious emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross-examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child delinquent or in need of protection or services under s. 48.13 (12) the court shall make findings relating to the proof of the violation of law and to the proof that the child named in the petition committed the violation alleged.

(5) The general public shall be excluded from hearings under this chapter unless a public fact-finding hearing is demanded by a child through his or her counsel. The court shall refuse the public hearing if the victim of an alleged sexual assault objects or in the case of a nondelinquency proceeding if a parent or guardian objects. If such a demand is not made, only the parties, their counsel, witnesses and other persons requested by a party and approved by

the court may be present. Any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court. Any person who divulges any information which would identify the child or the family involved in any proceeding under this chapter shall be subject to ch. 295.

(6) If the court finds that it is in the best interest of the child, and if the child's counsel or guardian ad litem consents, the child may be temporarily excluded by the court from a hearing or a petition alleging him or her to be in need of protection or services.

(7) At the close of the fact-finding hearing, the court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than 10 days from the fact-finding hearing for a child in secure custody and no more than 30 days from the fact-finding hearing for a child not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

History: 1977 c. 354, 447.

See note to Art. I, sec. 5, citing *McKeiver v. Pennsylvania*, 402 US 528.

48.315 Delays, continuances and extensions. (1) The following time periods shall be excluded in computing time requirements within this chapter:

(a) Any period of delay resulting from other legal actions concerning the child, including an examination under s. 48.295 or a hearing related to the child's mental condition, prehearing motions, waiver motions and hearings on other matters.

(b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and counsel.

(c) Any period of delay caused by the disqualification of a judge.

(d) Any period of delay resulting from a continuance granted at the request of the representative of the public under s. 48.09 if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at the later date, or to allow him or her additional time to prepare the case and additional time is justified because of the exceptional circumstances of the case.

(e) Any period of delay resulting from the imposition of a consent decree.

(f) Any period of delay resulting from the absence or unavailability of the child.

(g) A reasonable period of delay when the child is joined in a hearing with another child as to whom the time for a hearing has not expired under this section if there is good cause for not hearing the cases separately.

(2) A continuance shall be granted by the court only upon a showing of good cause in open court on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

History: 1977 c. 354.

48.317 Jeopardy. Jeopardy attaches:

(1) In a trial to the court, when a witness is sworn.

(2) In a jury trial, when the jury selection is completed and the jury sworn.

History: 1977 c. 354.

48.32 Consent decree. (1) At any time after the filing of a petition for a proceeding relating to s. 48.12 or 48.13 and before the entry of judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child under supervision in the child's own home or present placement. The court may establish terms and conditions applicable to the parent, guardian or legal custodian, and to the child. The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older; the parent, guardian or legal custodian; and the person filing the petition under s. 48.25. The consent decree may include provisions for payment of the services under s. 48.36. The consent decree shall be reduced to writing and given to the parties.

(2) A consent decree shall remain in effect up to 6 months unless the child, parent, guardian or legal custodian is discharged sooner by the judge or juvenile court commissioner. Upon the motion of the court or the application of the child, parent, guardian, legal custodian, intake worker or any agency supervising the child under the consent decree, the court may, after giving notice to the parties to the consent decree and their counsel, if any, extend the decree for up to an additional 6 months in the absence of objection to extension by the parties to the initial consent decree. If the parent, guardian or legal custodian objects to the extension, the judge shall schedule a hearing and make a determination on the issue of extension.

(3) If, prior to discharge by the court, or the expiration of the consent decree, the court finds that the child or parent, legal guardian or legal custodian has failed to fulfill the express terms and conditions of the consent decree or that the child objects to the continuation of the consent

decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

(4) No child who is discharged by the court or who completes the period of supervision without reinstatement of the original petition may again be proceeded against in any court for the same offense alleged in the petition or an offense based on the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child or parent for damages arising from the child's conduct.

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

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

(b) A consent decree is granted but the petition under s. 48.12 or 48.13 is subsequently reinstated.

History: 1977 c. 354.

SUBCHAPTER VI

DISPOSITION

48.33 Court reports. Before the disposition of cases of children adjudged to be delinquent or in need of protection or services an agency under s. 48.069 designated by the judge shall submit a report as specified in this section to the judge. The report shall recommend a plan of rehabilitation or treatment and care which employs the least restrictive means necessary to accomplish the purpose. The report shall include:

(1) The social history of the child.

(2) A statement of the objectives of the rehabilitation or treatment and care to be provided including desirable behavior changes and academic, social and vocational skills to be achieved.

(3) The identity of the agency or person recommended to be made primarily responsible for provision of services mandated by the judge and the identity of the proposed legal custodian if custody is to be transferred to effect the treatment plan.

(4) If placement outside the child's home is recommended, substantiation that care and services that would permit the child to remain at home have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not appropriate. Specifically, the report shall describe:

(a) What alternatives to the plan are available;

(b) What alternatives have been explored; and

(c) Why the explored alternatives are not appropriate.

(5) If placement outside the child's home is recommended, the name of the place or facility where the child shall be cared for or treated except that in the case of individual foster home treatment where the name and address of the foster parent is not available at the time of the report, that information shall be furnished to the court and the child's parent within 21 days of the court order. If after a hearing on the issue held with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent would result in imminent danger to the child or to the foster parent, the judge may order the name and address of the foster parent withheld from the parent or guardian.

(6) If placement more than 60 miles away from the child's home is recommended, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate for the child.

History: 1977 c. 354.

48.335 Dispositional hearings. (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be delinquent under s. 48.12, to have violated a civil law or ordinance under s. 48.125 or to be in need of protection or services under s. 48.13.

(2) The hearing shall be reported and the record may be transcribed upon the request of any party and with the approval of the court or under s. 48.47 (2).

(3) At hearings under this section, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

(4) If the court finds that it is in the best interest of the child, and if the child's counsel or guardian ad litem consents, the child may be temporarily excluded from a dispositional hearing in a case in which he had been adjudged in need of protection and services.

(5) At the conclusion of the hearing, the court shall make a dispositional order in accordance with s. 48.355.

History: 1977 c. 354.

48.34 Disposition of child adjudged delinquent. If the judge adjudges a child delinquent, he or she shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that subs. (4m) and (8) shall be exclusive dispositions:

(1) Counsel the child or the parent, guardian or legal custodian.

(2) Place the child under supervision of an agency, the department if the department approves or a suitable adult, including a friend of the child, under conditions prescribed by the judge including reasonable rules for the child's conduct and the conduct of the child's parent, guardian or legal custodian, designed for the physical, mental and moral well-being and behavior of the child.

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

(a) The home of a relative of the child.

(b) A home which need not be licensed if placement is for less than 30 days.

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

(d) A residential treatment center licensed under s. 48.60.

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

(a) A relative of the child;

(b) A county agency;

(c) A licensed child welfare agency; or

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

(a) The child has been found to be delinquent for the commission of an act which if committed by an adult would be punishable by a sentence of 6 months or more; and

(b) The child has been found to be a danger to the public and to be in need of restrictive custodial treatment.

(5) If the child is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the judge may order the child to repair damage to property or to make reasonable restitution for the damage or injury if the judge considers it beneficial to the well-being and behavior of the child. Objection by the child to amount of

damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered.

(6) If the child is in need of special treatment and care the judge may order the child's parent, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails or is financially unable to provide the care, the judge may order the care provided by an appropriate agency whether or not legal custody has been taken from the parents.

(7) The judge may restrict, suspend or revoke the operating privilege, as defined in s. 340.01 (40), of a child who is adjudicated delinquent under a violation of any law in which a motor vehicle is involved. Any limitation of the operating privilege shall be endorsed upon the operator's license and notice of the limitation forwarded to the department of transportation.

(8) If the judge finds that no other court services or alternative services are needed or appropriate it may impose a maximum forfeiture of \$50 based upon a determination that this disposition is in the best interest of the child and in aid of rehabilitation. Any such order shall include a finding that the child alone is financially able to pay the forfeiture and shall allow up to 12 months for payment. If the child fails to pay the forfeiture, the judge may vacate the forfeiture and order other alternatives under this section, in accordance with the conditions specified in this chapter.

(9) SUPERVISED WORK PROGRAM. (a) The judge may utilize as a dispositional alternative court-ordered participation in a supervised work program. The judge shall set standards for the program within the budgetary limits established by the county board. The work program may provide the child reasonable compensation reflecting a reasonable market value of the work performed, and shall be administered by the county department of public welfare or a community agency approved by the judge.

(b) The supervised work program shall be of a constructive nature designed to promote the rehabilitation of the child, shall be appropriate to the age level and physical ability of the child and shall be combined with counseling from a member of an agency staff or other qualified person. The program may not conflict with the child's regular attendance at school.

(10) SUPERVISED INDEPENDENT LIVING. (a) The judge may order that a child 17 or more years of age be allowed to live independently, either alone or with friends, under such supervision as the judge deems appropriate.

(b) If the plan for independent living cannot be accomplished with the consent of the parent

or guardian, the judge may transfer custody of the child as provided in sub. (4) (a) to (c).

(c) The judge may order independent living as a dispositional alternative only upon a showing that the child is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39; 1977 c. 156, 354, 447.

A child adjudicated as delinquent may be committed to the department of health and social services for an indeterminate period which may extend beyond the sentence permissible for an adult as punishment for the equivalent crime. In re Interest of J.K. (a minor), 68 W (2d) 426, 228 NW (2d) 713.

Due process: revocation of a juvenile's parole Sarosiek, 1973 WLR 954.

48.343 Disposition of child adjudged to have violated a civil law or an ordinance. If the court finds that the child violated a civil law or an ordinance, it shall enter an order making one or more of the following dispositions:

(1) Counsel the child or the parent or guardian.

(2) Impose a forfeiture not to exceed \$25. If a child fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or suspend the child's operating privilege as defined in s. 340.01 (40), for not less than 30 nor more than 90 days. The court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the first 30 days after the license is suspended, the suspension shall be reduced to the minimum period of 30 days. If it is paid thereafter, the court shall immediately notify the department, which will thereupon return the license to the person.

(3) Order the child to participate in a supervised work program under s. 48.34 (9).

(4) If the violation has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the court may order the child to make repairs of the damage to property or reasonable restitution for the damage or injury if the court considers it beneficial to the well-being and behavior of the child. Any such order requiring payment for repairs or restitution shall include a finding that the child alone is financially able to pay and shall allow up to 12 months for the payment. Objection by the child to the amount of damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered.

(5) If the violation is related to unsafe use of a boat, order the child to attend a safety course under s. 30.74 (1).

(6) If the violation is of ch. 29, suspension of the license or licenses of the child issued under that chapter for not less than one year or until the child is 18 years of age, whichever occurs first.

History: 1977 c. 354.

48.345 Disposition of child adjudged in need of protection or services. If the judge finds that the child is in need of protection or services, it shall enter an order deciding one or more of the dispositions of the case as provided in s. 48.34 under a care and treatment plan except that the plan shall not:

(1) Transfer the custody of the child to the subunit of the department administering corrections;

(2) Order restitution;

(3) Order payment of a forfeiture;

(4) Restrict, suspend or revoke the driving privileges of the child; or

(5) Place any child not specifically found to be developmentally disabled, mentally ill or to have exceptional educational needs in facilities approved for the treatment of those categories of children under chs. 46, 49, 51, 115 and 880.

History: 1971 c. 125; 1977 c. 354.

48.35 Effect of judgment and disposition.

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

(a) A judgment in proceedings on a petition under this chapter shall not be deemed a conviction of a crime, shall not impose any civil disabilities ordinarily resulting from the conviction of a crime and shall not operate to disqualify the child in any civil service application or appointment.

(b) The disposition of a child, and any record of evidence given in a hearing in court, shall not be admissible as evidence against the child in any case or proceeding in any other court after the child reaches majority except in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report.

(c) Disposition by the court assigned to exercise jurisdiction under this chapter of any allegation under s. 48.12 shall bar any future proceeding on the same matter in criminal court when the child reaches the age of 18. This paragraph does not affect proceedings in criminal court which have been transferred under s. 48.18.

(d) A child adjudged to be delinquent may not be proceeded against under ch. 54.

(e) If a child is found to be not responsible by reason of mental disease or defect the petition shall be dismissed with prejudice.

(2) Except as specifically provided in sub. (1), this section does not preclude the court from disclosing information to qualified persons if the court considers the disclosure to be in the best interests of the child or of the administration of justice.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39; 1977 c. 29; 1977 c. 354 ss. 59, 63; 1977 c. 447, 449

Where evidence of prior rape is introduced at rape trial to prove identity, testimony of prior rape victim is admissible notwithstanding that defendant was tried as juvenile for prior rape. See note to 906.09, citing *Sanford v. State*, 76 W (2d) 72, 250 NW (2d) 348.

Inferential impeachment; the presence of parole officers at subsequent juvenile adjudications. O'Donnell, 55 MLR 349.

48.355 Dispositional orders. (1) INTENT. In any order under s. 48.34 or 48.345 the judge shall decide on a placement and treatment finding based on evidence submitted to the judge. The disposition shall employ those means necessary to maintain and protect the child's well-being which are the least restrictive of the rights of the parent or child and which assure the care, treatment or rehabilitation of the child and the family. Wherever possible the family unit shall be preserved and there shall be a policy of transferring custody from the parent only where there is no less drastic alternative.

(2) **CONTENT OF ORDER.** (a) In addition to the order, the judge shall make findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition of each individual coming before him or her.

(b) The court order shall contain:

1. The identity of the agency which is to be primarily responsible for the provision of the services mandated by the judge and, if custody is to be transferred to effect the treatment plan, the identity of the legal custodian.

2. If the child is placed outside the home, the name of the place or facility, including transitional placements, where the child shall be cared for or treated, except that in the case of individual foster home treatment where the name and address of the foster parent shall be furnished to the court and the parent within 21 days of the order, except that if, after a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent would result in imminent danger to the child or the foster parent, the judge may order the name and address of the prospective foster parents withheld from the parent or guardian.

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

4. A designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee.

(3) **PARENTAL VISITATION.** If, after a hearing on the issue with due notice to the parent or

guardian, the judge finds that it would be in the best interest of the child, the judge may set reasonable rules of parental visitation.

(4) **TERMINATION OF ORDERS.** All orders under this section shall terminate at the end of one year unless the judge specifies a shorter period of time. Extensions or revisions shall terminate at the end of one year unless the judge specifies a shorter period of time. Any order made before the child reaches the age of majority shall be effective for a time up to one year after its entry unless the judge specifies a shorter period of time.

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

History: 1977 c. 354

48.357 Change in placement. (1) Except as provided in subs. (2) to (5), prior to any change in placement authorized by a dispositional order, the person or agency primarily responsible for implementing the order shall cause written notice to be sent to the court and to the child, parent, guardian and legal custodian. The notice shall contain the name and address of the new placement, the reasons for the change in placement and a statement of how the new placement satisfies the treatment plan ordered by the court. Any party receiving the notice or notice of the specific foster placement under s. 48.355 (2) (b) 2 may obtain a hearing on the matter by filing an objection with the court within 10 days of receipt of the notice. Placements shall not be changed until 10 days after such notice is sent to the court unless the parent, guardian or legal custodian and the child, if 14 or more years of age, sign written waivers of objection.

(2) If emergency conditions necessitate an immediate change in the placement of a child placed outside the home, the person or agency primarily responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without the prior notice provided in sub. (1). The notice shall, however, be sent within 48 hours after the emergency change in placement. If a new placement is authorized under the existing dispositional order, any party receiving notice may demand a hearing under sub. (1). If the new placement is not so authorized, the person or agency which made the emergency placement shall within 5 days petition the judge for a revision of the order under s. 48.363.

(3) The department may, after an examination under s. 48.50, allow a child liberty under supervision, either immediately or after a period

of placement in a facility under s. 48.52. The department shall send written notice of the change to the parent, guardian, legal custodian and committing court.

(4) If a child placed with the subunit of the department administering corrections has been released on after-care or field supervision, revocation of the status and return to residential placement shall not require prior notice under sub. (1), but the notice shall be sent within 48 hours after revocation. A child on after-care or field release status may be taken into custody only as provided in s. 48.19. If charged with a violation of the conditions of release, the child shall be entitled to representation by counsel at an administrative hearing conducted under ch. 227 by an independent officer of the department. Review of a revocation decision shall be by certiorari to the court by whose order the child was placed with the subunit of the department administering corrections.

(5) If the proposed change in placement would involve placing the child with the subunit of the department administering corrections other than in the manner described in sub. (4), a hearing shall be held, unless waived by the child, parent, guardian and legal custodian, before the judge makes a decision. The child shall be entitled to counsel at the hearing, and any party opposing or favoring the new placement may present relevant evidence and cross-examine witnesses. The new placement may be approved only if the judge finds, on the record, that the conditions set forth in s. 48.34 (4m) have been met.

History: 1977 c. 354.

48.36 Payment for services. (1) If legal custody is taken from the parent or guardian and disposition made under s. 48.355, the duty of the parent or guardian to provide support shall continue even though the legal custodian may provide the support. A copy of the order transferring custody shall be submitted to the agency or person receiving such custody and such agency or person may apply to the court for an order to compel the parent or guardian to provide the support.

(2) If a child whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological or psychiatric treatment by order of the court, the cost thereof, if ordered by the court, shall be a charge upon the county. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child as the court may order based on the ability of the parent or guardian to pay. This subsection shall be subject to s. 46.03 (18).

(3) In determining county liability, this section does not apply to services specified in ch. 115 or provided by mental health boards under ch. 51.

History: 1977 c. 354

48.363 Revision of dispositional orders.

The parent, child, guardian or legal custodian or any person or agency bound by a dispositional order may petition for a revision in the order, or the court may on its own motion propose such a revision. The petition or court proposal shall set forth in detail the nature of the proposed revision and the reasons why it is alleged to be preferable to the order in light of the information and alternatives currently available under s. 48.33. The petition or court proposal shall be sent to all parties, any of whom may demand a hearing by filing objections to the proposed revision within 10 days. A revision of a dispositional order may transfer custody of a child to the subunit of the department administering corrections only if a hearing is held, unless waived by the child, parent, guardian and legal custodian, before the judge makes a decision on the issue. The child shall be entitled to counsel at the hearing, and any party opposing or favoring the proposed revision may present relevant evidence and cross-examine witnesses. The proposed revision may be approved only if the judge finds, on the record, that the conditions set forth in s. 48.34 (4m) have been met. No revision may extend the effective period of the original order.

History: 1977 c. 354.

48.365 Extension of orders. No order under s. 48.355 may be extended except as provided in this section:

(1) Pursuant to a hearing before the judge which shall include:

(a) Notice to the child or guardian ad litem or counsel, parent, guardian, legal custodian and all the parties present at the original hearing.

(b) A signed and filed court report by the person or agency designated by the judge as primarily responsible for the provision of services to the child. The report shall contain:

1. A statement to what extent this placement has been meeting the objectives of treatment, care or rehabilitation as specified in the judge's findings of fact; and

2. An evaluation of the child's adjustment to the placement, progress he or she has made, and anticipated future planning for the child; and

3. A description of efforts that have been made toward returning the child to his or her parental home, including efforts of the parents to remedy factors which contributed to the transfer of the child, and an explanation why

returning the child to his or her home is not feasible.

(c) Taking of evidence to support findings of fact and conclusions of law and an order under s. 48.355 (2).

(2) The appearance of any child may be waived by consent of the child, counsel or guardian ad litem.

(3) Upon the motion of the person or agency primarily responsible for the provision of services as designated in the court order for a period of not more than 30 days if there is a showing of good cause as to why the matter was not brought before the court before the expiration date of the dispositional order pursuant to one of the provisions provided in this section.

(4) The judge shall determine which dispositions are to be considered for extensions.

(5) All orders shall be for a specified length of time not to exceed one year.

(6) Nothing in this section may be construed to allow the return of a child on after-care or field release to a secured correctional facility. Revocation may take place only under s. 48.357 (4).

History: 1977 c. 354.

48.37 Costs. No costs may be assessed against any child in a court assigned to exercise jurisdiction under this chapter.

History: 1977 c. 354, 449.

48.373 Medical authorization. The court may authorize medical services including surgical procedures when needed if the court determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court and consents.

History: 1971 c. 105; 1977 c. 354 s. 64; 1977 c. 449.

SUBCHAPTER VII

RECORDS

48.39 Disposition by court bars criminal proceeding. Disposition by the court of any violation of state law coming within its jurisdiction under s. 48.12 bars any future criminal proceeding on the same matter in circuit court when the child reaches the age of 18. This section does not affect criminal proceedings in circuit court which were transferred under s. 48.18.

History: 1977 c. 449.

48.396 Records. (1) Peace officers' records of children shall be kept separate from records of persons 18 or older and shall not be open to inspection or their contents disclosed except by order of the court or according to s. 48.293. This

subsection shall not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child involved or to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 16 or older who are transferred to the criminal courts.

(2) Records of the court assigned to exercise jurisdiction under this chapter shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court.

(3) This section shall not apply to proceedings for violation of chs. 340 to 349 or any county or municipal ordinance enacted under ch. 349.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449.

48.397 Support of child when legal custody transferred from parent. (1) (a) If legal custody is taken from the parents and disposition is made under s. 48.34 or 48.345, the duty of the parents to provide for support continues even though the legal custodian may provide the support, and upon a parent's failure to make payment for the support, the department may apply to the court for an order to compel payment; but if the parents are unable to provide the support, the financial resources of the child may be used.

NOTE: Par. (a) is shown as affected by chapters 354, 447 and 449, laws of 1977, as directed by 13.93 (2) (c). Ch. 449 purported to take into account ch. 354, but in fact had a reference to 48.35, which was changed to 48.345 by ch. 354.

(b) Upon termination of parental rights and disposition under ss. 48.40 and 48.43, the financial resources of the child may be used for its support even though its legal custodian may provide such support.

(2) When a child whose legal custody has not been taken from its parents is given medical, psychological or psychiatric treatment by order of the court and no provision is otherwise made by law for payment, the cost thereof, when approved by order of the court, shall be a charge upon the county, but nothing herein shall prevent recovery of such costs from the parents of such child, as the court may order.

(3) When a child brought into court is placed in a county or private institution for care, or when the child is given medical, psychological or psychiatric treatment under order of the court, the judge shall determine the legal settlement of the child and shall forward a copy of this finding, which may be included within the order, within 20 days by certified mail to the county

clerk of the county of legal settlement. Failure to so notify the county of legal settlement within 20 days shall be a bar to recovery for care and treatment already rendered from the county of legal settlement and shall be a bar in the future until notice is sent but the provisions of this subsection as to the judge's finding shall apply only to orders made by the court after August 15, 1965.

(4) The county charged with the cost of the care and treatment under subs. (2) and (3) may recover the cost from the county where the child has legal settlement by filing verified claims with that county clerk which shall be payable as are other claims against the county. Any dispute relating to these claims and involving a judge's finding of legal settlement may be appealed by any county to the department under s. 46.106 (4) to (7) and adjusted pursuant to this procedure after hearing, review and correction.

History: 1975 c. 430 s. 80; 1977 c. 354 ss. 47, 101; 1977 c. 447 s. 210; 1977 c. 449.

SUBCHAPTER VIII

TERMINATION OF PARENTAL RIGHTS

48.40 Grounds for termination of parental rights. The court may, upon petition, terminate all rights of parents to a minor in any of the following cases:

(1) With the written consent of the parents to the termination of their parental rights, providing such consent may be withdrawn at any time prior to termination of their rights; or

(2) If it finds that one or more of the following conditions exist:

(a) That the parents have abandoned the minor; or

(b) That the parents have substantially or continuously or repeatedly refused or neglected or are unable for a prolonged indeterminate period to give the minor the parental care and protection necessary for his health, morals or well-being; or

(c) That, although the parents are financially able, they have substantially and continuously neglected to provide the minor with necessary subsistence, education or other care necessary for his health or well-being or have neglected to pay for such subsistence, education or other care when legal custody is lodged with others; or

(d) That the parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd or lascivious behavior or conviction and confinement for a felony (including hospitalization within the sex deviate statutes), which conduct or status is found by the court to be likely to be detrimental

to the health, morals or the best interests of the minor; or

(e) That the parents, subsequent to a finding of neglect, have failed to correct the conditions leading to such a finding despite reasonable efforts under the direction of the court to rectify the conditions upon which such finding was based; or

(3) If the parents are found mentally deficient or mentally ill by a court of competent jurisdiction in a proceeding other than the instant termination of a parental rights proceeding and the court assigned to exercise jurisdiction under this chapter finds:

(a) That because of such mental deficiency or mental illness the parents are and will continue to be incapable of giving the minor proper parental care and protection for a prolonged indeterminate period, or when one parent is found mentally deficient or mentally ill and the other parent has substantially or continuously or repeatedly refused or neglected to give the minor the parental care and protection necessary for his health, morals or well-being; or

(b) That grounds for termination under sub. (2) existed prior to the time of the finding of mental illness.

History: 1973 c. 263; 1977 c. 449

Parents whose rights have been terminated do not inherit from a child; his brothers and sisters (whether parental rights as to them have been terminated or not) are his heirs. Estate of Pamanet, 46 W (2d) 514, 175 NW (2d) 234.

Consent by the mother subsequent to the birth of the child to termination of her parental rights in its best interests so that the child might be placed for adoption constituted an abandonment, and although she was permitted to withdraw that consent by a previous decision of the supreme court, the best interests of the child require modification of the county court order to effect a termination of her parental rights. State ex rel. Lewis v. Lutheran Social Services, 68 W (2d) 36, 227 NW (2d) 643.

Putative father's right to custody of his child. 1971 WLR 1262.

48.41 Jurisdiction and venue for termination of parental rights. The court has jurisdiction to terminate parental rights if the minor is within the state or as otherwise allowed under s. 822.03. If a court has made an order under s. 48.34 or 48.355 transferring legal custody of the minor, that court shall hear the termination of parental rights proceeding unless it transfers the proceeding along with all appropriate records to the county where the minor or parents are. Otherwise venue for the proceeding is in the county either where the minor is or where the parents whose rights are being terminated are.

History: 1975 c. 283, 421; 1977 c. 354 s. 101; 1977 c. 449.

48.42 Procedure in terminating parental rights. (1) The termination of parental rights under s. 48.40 shall be made only after a hearing before the court. The court shall have notice of the time, place and purpose of the hearing served

on the parents personally at least 10 days prior to the date of the hearing. If the court is satisfied that personal service, either within or outside the state, cannot be effected, then such notice may be given by registered mail sent at least 20 days before the date of the hearing to the last-known address of the parent. If notice by registered mail is not likely to be effective, the court may order notice to be given by publication at least 20 days before the date of the hearing. If notice is given by publication, the name of the mother shall be included in such notice only if the court following a hearing on the need for inclusion of the mother's name determines in any termination proceeding that such inclusion is essential to give effective notice to the natural father. In determining whether such inclusion is essential, the court shall consider the mother's right to privacy. Publication shall be in a newspaper likely to give notice in the county of the last-known address of the parent, whether within or without the state, or if no address is known, in the county where the termination petition has been filed. Publication within the state shall be as a class 1 notice, under ch. 985. Publication outside the state shall be in a manner which the court finds to be comparable to a class 1 notice. A parent who consents to the termination of his parental rights under s. 48.40 (1) may waive in writing the notice required by this section; if the parent is a minor or incompetent his waiver shall be effective only if his guardian ad litem concurs in writing.

(2) In the case of any minor or incompetent parent the court shall appoint a guardian ad litem. No parental rights may be terminated on consent under s. 48.40 (1) unless the guardian ad litem, in writing, joins in the written consent of the parent to the termination of his parental rights. When the parent and the guardian ad litem consent in writing to the termination of parental rights, minority or incompetence shall not be grounds for later attack on an order terminating parental rights which order is based on such consent and the court's finding that the consent was freely and intelligently given.

(3) In addition to the notice provided parents under sub. (1), in a proceeding under s. 48.40 to terminate the parental rights to a child born out of wedlock and not subsequently legitimated or adopted, the court shall provide notice, as if he were a parent, to a person who has filed a declaration of interest under s. 48.025, to a person who may be the natural father of the child and who is living in a familial relationship to the child, to a person who has been adjudged to be the natural father of the child and to a person alleged to the court to be the natural father of the child. Constructive notice shall be given in all cases where no person has previously

been adjudged to be the natural father and the court is unable to adjudge paternity. If notice is given by publication the name of the mother shall be included in such notice only if the court following a hearing on the need for inclusion of the mother's name determines that such inclusion is essential to give effective notice to the natural father. In determining whether such inclusion is essential, the court shall consider the mother's right to privacy.

History: 1973 c. 263; 1977 c. 354.

A guardian ad litem can be appointed any time before the hearing. Where the mother is no longer a minor at the time of the hearing and when she signs the consent, no guardian ad litem is necessary. *Schroud v. Milw. County Dept. of Pub Welfare*, 53 W (2d) 650, 193 NW (2d) 671.

Notice of termination of parental rights must be given to the father of an illegitimate child. *State ex rel. Lewis v. Lutheran Social Services*, 59 W (2d) 1, 207 NW (2d) 826.

48.425 Hearings and findings. (1) If no person has previously been adjudged to be the natural father of the child, the court shall make inquiry of the mother as to the identity of the natural father. The parental rights of a person who has been adjudged in a court proceeding to be the natural father of a child born out of wedlock and not subsequently legitimated or adopted shall be terminated only in accordance with s. 48.43.

(2) If a person who has filed a declaration under s. 48.025 or a person who alleges himself to be the natural father of the child appears at the hearing, the court shall determine whether he is the natural father by a clear and convincing preponderance of the evidence. Upon a finding that he is the natural father, he shall be adjudged a parent. His parental rights shall be terminated only in accordance with s. 48.43.

(2n) If paternity has been adjudged, the court may make and enforce such orders or provisions, in the best interests of the child, for the suitable care, custody, support and maintenance of the child as a court having jurisdiction over actions affecting marriage may make under ss. 247.23, 247.24 and 247.25 to 247.28, until parental rights of one or both of the parents of such child are terminated.

(3) If the court determines that it is unable to identify the natural father the court may, following the hearing, based on the best interests of the child, terminate any right or interest the natural father may have in the child only if at least 30 days have elapsed since the date of birth of the child.

(5) Termination of the natural father's rights under sub. (3) or s. 48.43 shall be required prior to the adoption of the child.

(6n) (a) The natural mother shall have legal custody of a child born out of wedlock and not subsequently legitimated or adopted, unless legal custody is transferred to another under s.

48.355 or 48.43 or the natural father is granted legal custody under par. (b) or sub. (2n).

(b) A natural parent whose parental rights have not been terminated may, at any time while he retains such status, petition the court for custody of the child. Notice of a hearing on the petition shall be served on all interested parties, and, after hearing, the court may grant such legal custody to the natural parent as a court having jurisdiction over actions affecting marriage may grant under s. 247.24. The court shall grant such custody in accordance with the standards under s. 247.24.

History: 1973 c. 263; 1977 c. 354 s. 101.

48.43 Disposition of proceeding to terminate parental rights. (1) If, after a hearing, the court finds that one or more of the conditions set out in s. 48.40 exist, it may terminate parental rights. If the court terminates parental rights of both parents, or of the only living parent, the court shall transfer guardianship and legal custody of the minor to:

(a) A county department of social services in counties having a population of 500,000 or more; or

(am) A county department of public welfare; or

(b) A child welfare agency licensed to accept guardianship of children; or

(c) The department; or

(d) A suitable individual in whose home the minor has resided at least one year prior to the termination of parental rights.

(2) If only one parent consents under s. 48.40 (1) or if the conditions specified in s. 48.40 (2) are found to exist as to only one parent, the rights of only that parent with reference to the minor may be terminated without affecting the rights of the other parent.

(3) A certified copy of the order terminating parental rights, a certified copy of the birth certificate of the minor, and a transcript of the testimony in the termination of parental rights hearing shall be furnished by the court to the person given guardianship of the minor.

(4) Except as otherwise determined by the court, any guardian appointed under the provisions of this chapter shall file with the court a report in writing on the status of the child at the end of 6 months following the date of the order appointing such guardian and on each anniversary date of such order. A copy of each such report so filed shall be made available to the circuit court in which the petition for the adoption of the child is filed at the time of filing the petition.

History: 1973 c. 263; 1975 c. 307; 1977 c. 271; 1977 c. 449 s. 497.

SUBCHAPTER IX

JURISDICTION OVER PERSON 18 OR OLDER

48.44 Jurisdiction over persons 18 or older. The court has exclusive jurisdiction over persons 18 or older in the case of contributing to a condition of a child as described in s. 48.12 or 48.13, and over persons subject to an order under s. 48.355 (4).

History: 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354.

48.45 Contributing to the adverse condition of children. (1) If in the hearing of a case of a child alleged to be in a condition described in s. 48.12 or 48.13 it appears that any person 18 or older has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the child, the judge may make orders with respect to the conduct of such person in his or her relationship to the child, including orders determining the ability of the person to provide for the maintenance or care of the child and directing when, how and where funds for the maintenance or care shall be paid.

(2) No order to any person 18 or older under sub. (1) may be entered until the person is given an opportunity to be heard upon the allegation against him or her and the contemplated order of the court. The court shall cause notice of the time, place and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases in the court, and shall otherwise be the procedure followed in courts of equity. Any person 18 or older who fails to comply with any order issued by a court under this section may be proceeded against for contempt of court. If the person's conduct involves a crime, the person may be proceeded against under the criminal law.

(3) If it appears at a court hearing that any person 18 or older has violated s. 947.15, the judge shall refer the record to the district attorney for criminal proceedings as may be warranted in the district attorney's judgment. This subsection does not prevent prosecution of violations of s. 947.15 without the prior reference by the judge to the district attorney, as in other criminal cases.

(4) An act or failure to act contributes to a condition of a child as described in s. 48.12 or 48.13, although the child is not actually adjudicated to come within the provisions of s. 48.12 or 48.13, if the natural and probable consequences of that act or failure to act would be to cause the

child to come within the provisions of s. 48.12 or 48.13.

History: 1977 c. 354, 449.

SUBCHAPTER X

REHEARING AND APPEAL

48.46 New evidence. A parent, guardian, legal custodian or next friend of any child whose status is adjudicated by the court may at any time within one year after the entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication or disposition. Upon a showing that such evidence does exist, the court shall order a new hearing and make a disposition of the case as the facts and the best interests of the child warrant.

History: 1977 c. 449.

An affidavit by the mother that she consented under duress and one by her attorney as to what he expected to prove are not sufficient to reopen the case. *Schroud v. Milw. County Dept. of Pub. Welfare*, 53 W (2d) 650, 193 NW (2d) 671.

48.47 Appeal. (1) Any person aggrieved by an adjudication of the court under this chapter and directly affected thereby has the right to appeal to the court of appeals in accordance with s. 809.40. Appeal from an order granting or denying an adoption under s. 48.91 and from any circuit court review under s. 48.64 (4) (c) shall be to the court of appeals.

(2) A child who has filed a notice of appeal shall be furnished a transcript of the proceedings appealed from or as much of it as is requested without cost upon the filing of an affidavit that the child or the person who is legally responsible for his or her care and support is financially unable or the person responsible is unwilling to purchase the transcript.

History: 1971 c. 40; 1977 c. 187, 354; Sup. Ct. Order, 83 W (2d) xxvii; 1977 c. 449.

SUBCHAPTER XI

DEPARTMENT

48.48 Authority of department. The department shall have authority:

(1) To promote the enforcement of the laws relating to delinquent children, children born out of wedlock and children in need of protection or services including developmentally disabled children and to take the initiative in all matters involving the interests of such children where adequate provision therefor is not made. This duty shall be discharged in cooperation with the courts, county agencies, licensed child welfare

agencies and with parents and other individuals interested in the welfare of children.

(2) To assist in extending and strengthening child welfare services with appropriate federal agencies and in conformity with the federal social security act and in cooperation with parents, other individuals and other agencies so that all children needing such services are reached.

(3) To accept legal custody of children transferred to it by the court under s. 48.355 and guardianship of children when appointed by the court, and to provide special treatment and care when directed by the court.

(4) To provide appropriate care and training for children in its legal custody; including serving those children in their own homes, placing them in licensed foster homes in accordance with s. 48.63 or licensed group homes or contracting for their care by licensed child welfare agencies.

(4m) To continue to provide appropriate care, training and services to any person who:

(a) Is at least 18 years of age;

(b) Was when he or she reached age 18 in legal custody of the department or a county agency established under ss. 48.56 and 48.57;

(c) Is less than 19 years of age; and

(d) Is determined by the department to be in need of care and services designed to fit such person for gainful employment and has requested and consented to receive such aid.

(5) To provide for the moral and religious training of children in its legal custody according to the religious belief of the child or of his parents;

(6) To consent to emergency surgery under the direction of a licensed physician or surgeon for any child in its legal custody upon notification by a licensed physician or surgeon of the need for such surgery and if reasonable effort, compatible with the nature and time limitation of the emergency, has been made to secure the consent of the child's parent or guardian;

(7) To accept guardianship of children when appointed by the court;

(8) To place children under its guardianship for adoption;

(9) (a) To license foster homes as provided in s. 48.66 for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county agencies;

(b) To license shelter care facilities as provided in s. 48.66.

(10) To license child welfare agencies and day care centers as provided in s. 48.66;

(11) When notified of the birth or expected birth of a child born or likely to be born out of wedlock, to see that the interests of the child are safeguarded, that steps are taken to establish its

paternity and that there is secured for the child, if possible, the care, support and education it would receive if legitimate.

(12) (a) To enter into an agreement to assist in the cost of care of a child after legal adoption when the department has determined that such assistance is necessary to assure the child's adoption. Agreements under this paragraph shall be made in accordance with s. 48.975. Payments shall be made from the appropriation under s. 20.435 (4) (b).

(b) This subsection shall be administered by the department according to criteria, standards and review procedures which it shall establish.

(13) To establish rules for the payment of an allowance to children in its institutions and a cash grant to a child being discharged or released to aftercare from its institutions.

(14) To pay maintenance, tuition and related expenses from the appropriation under s. 20.435 (4) (b) for persons who when they reached 18 years of age were students regularly attending a school, college or university or regularly attending a course of vocational or technical training designed to fit them for gainful employment, and who when reaching such age were in legal custody of the department as a result of a judicial decision.

(15) To license group homes as provided in s. 48.625.

History: 1973 c. 90, 333; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 354, 418, 447, 449

48.49 Notification by court of transfer to department; information for department.

(1) When the court transfers legal custody of a child to the department, the court shall immediately notify the department of that action. The court shall, in accordance with procedures established by the department, provide transportation for the child to a receiving center designated by the department or deliver the child to personnel of the department.

(2) The court and all other public agencies shall furnish the department on request all pertinent data in their possession regarding the child whose legal custody is transferred to the department.

History: 1977 c. 449

48.50 Examination of children in legal custody of department. (1) The department shall examine all children whose legal custody is transferred to it by the court to determine the type of placement best suited to the child and, in the case of children who have violated a state law, to the protection of the public. This examination shall include an investigation of the personal and family history of the child and his or

her environment and any physical or mental examinations considered necessary.

(2) In making this examination the department may use any facilities, public or private, which offer aid to it in the determination of the correct aftercare placement for the child.

History: 1977 c. 354.

48.52 Facilities for care of children in care of department. (1) FACILITIES MAINTAINED OR USED FOR CHILDREN. The department may maintain or use the following facilities for children in its care:

(a) Receiving homes to be used for the temporary care of children;

(b) Foster homes;

(c) Group homes;

(d) Institutions, facilities and services, including without limitation forestry or conservation camps for the training and treatment of children 12 years of age or older who have been adjudged delinquent;

(f) Other facilities deemed by the department to be appropriate for the child, except that no state funds may be used for the maintenance of a child in the home of a parent or relative eligible for aid under s. 49.19 if such funds would reduce federal funds to this state.

(2) USE OF OTHER FACILITIES. (a) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may also contract for and pay for the use of other public facilities or private facilities for the care and treatment of children in its care; but placement of children in private or public facilities not under its jurisdiction does not terminate the legal custody of the department. Placements in institutions for the mentally ill or developmentally disabled shall be made in accordance with ss. 48.14 (5) and 48.63 and ch. 51.

(b) Public facilities are required to accept and care for persons placed with them by the department in the same manner as they would be required to do had the legal custody of these persons been transferred by a court of competent jurisdiction. Nothing in this subsection shall be construed to require any public facility to serve the department inconsistently with its functions or with the laws and regulations governing their activities; or to give the department authority to use any private facility without its consent.

(c) The department shall have the right to inspect all facilities it is using and to examine and consult with persons in its legal custody who have been placed in that facility.

(3) PLACEMENT. Nothing in this section shall preclude the placement of a child in any of the above facilities so long as he is under the age of

18, provided he is legally under sentence to the department under a provision of the criminal code.

(4) COEDUCATIONAL PROGRAMS AND INSTITUTIONS. The department may institute and maintain coeducational programs and institutions under this chapter.

History: 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90; 1975 c. 39, 430; 1977 c. 354.

A juvenile in the custody of the department may not be transferred to an adult-serving penal institution. State ex rel. Edwards v. McCauley, 50 W (2d) 597, 184 NW (2d) 908.

A detention home is not one of the other facilities. State ex rel. Harris v. Larson, 64 W (2d) 521, 219 NW (2d) 335.

See note to 48.62, citing 63 Atty. Gen. 34.

Foster homes leased by the department pursuant to this section are immune from local zoning to the extent that the zoning conflicts with the department's possessory use of property under ch. 48, subject to 13.48 (13). The lessor remains responsible for property tax. 65 Atty. Gen. 93

48.53 Duration of control over delinquents. (1) All children adjudged delinquent, whose legal custody has been transferred to the department, shall be discharged as soon as the department determines that there is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the child or for the protection of the public that the department retain legal custody.

(2) All children adjudged delinquent, whose legal custody has been transferred to the department, and who have not been discharged under sub. (1), shall be discharged when they reach the age of 18.

History: 1971 c. 213 s. 5; 1975 c. 39.

48.54 Records. The department shall keep a complete record on each child in its legal custody. This record shall include the information received from the court, the date of reception, all available data on the personal and family history of the child, the results of all tests and examinations given the child, and a complete history of all placements of the child while in the legal custody of the department.

History: 1977 c. 449

SUBCHAPTER XII

COUNTY CHILD WELFARE SERVICES

48.56 County child welfare services. (1) Each county shall provide child welfare services through the staff of one or more of the following agencies:

(a) A county welfare department authorized by the county board under s. 46.22 (5) (g) to provide child welfare services; or

(c) In counties with a population of 500,000 or more a county department of social services organized under s. 49.51.

(2) Each county shall require the agency furnishing child welfare services to employ personnel who devote all or part of their time to child welfare services. Whenever possible, this personnel shall have the qualifications required for state social workers under civil service law who perform similar types of duties.

(3) This section shall not apply to those counties which had child welfare services administered by the staff of the juvenile court prior to January 1, 1955.

History: 1975 c. 307; 1977 c. 271

48.57 Powers and duties of county agencies providing child welfare services. (1)

The county agency specified in s. 48.56 (1) to provide child welfare services shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board or donated by individuals or private organizations. It shall have authority:

(a) To investigate the conditions surrounding delinquent children, children born out of wedlock and children in need of protection or services including developmentally disabled children within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, county agencies shall offer social services to the caretaker of any child who is referred to the agencies as coming within the conditions specified in this paragraph. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of these laws;

(b) To accept legal custody of children transferred to it by the court under s. 48.355 and to provide special treatment and care if ordered by the court;

(c) To provide appropriate protection and services for children in its care, including providing services for children and their families in their own homes, placing the children in licensed foster homes or licensed group homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for them by licensed child welfare agencies;

(d) To provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents;

(e) If a county department of social services in a county with a population of 500,000 or more, to place children in a county children's home in the county under rules adopted by the board of public welfare of the county, to accept

guardianship of children when appointed by the court and to place children under its guardianship for adoption;

(f) To provide services to the court under s. 48.06;

(g) Upon request of the department to provide service for any child in the care of the department;

(h) To contract with any parent or guardian or other person for the care and maintenance of any child;

(hm) If licensed by the department to do so, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption;

(i) To license foster homes in the county in accordance with s. 48.75.

(2) In performing the functions specified in sub. (1) the county agency may avail itself of the co-operation of any individual or private agency or organization interested in the social welfare of children in the county.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449.

This section does not authorize the department to place children in a detention home temporarily while permanent placement is sought. *State ex rel. Harris v. Larson*, 64 W (2d) 521, 219 NW (2d) 335.

County agencies providing child welfare services do not have authority under (1) or 48.52 to lease real property for foster home use. 65 Atty. Gen. 93

48.58 County children's home. (1) Any existing county children's home may do any of the following:

(a) Accept legal custody of dependent or neglected children transferred to it by the court;

(b) Provide care for children in need of protection or services referred by the county welfare department or department of social services;

(c) Provide temporary shelter care for children in need of protection or services.

(d) Provide temporary shelter care for children taken into custody under s. 48.19.

(2) A county shall be reimbursed by the state for 50% of the allowable per capita cost of care of the children who are in a children's home under sub. (1) (a) to (d).

(a) Reimbursement under sub. (1) (c) shall be limited to the first 30 days of care. Allowable cost shall be determined according to s. 46.037. Payment shall be made from the appropriations under s. 20.435 (4) (b) and (n). For fiscal year 1977-78, reimbursement under sub. (1) (d) shall follow the policy of reimbursement outlined for sub. (1) (c).

(b) On or after July 1, 1978, reimbursement under sub. (1) (d) shall be limited to the first 20 days of care per episode and shall not exceed \$15

per day. Payment shall be made from the appropriation under s. 20.435 (4) (dj).

History: 1973 c. 90; 1975 c. 39, 189, 224; 1977 c. 29, 194, 271, 354, 418, 447, 449

48.59 Examination and records. (1) The county agency shall investigate the personal and family history and environment of any child transferred to its legal custody and make any physical or mental examinations of the child considered necessary to determine the type of care necessary for the child. The county agency shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the child, the results of all tests and examinations given the child and a complete history of all placements of the child while in the legal custody of the county agency.

(2) The county agency shall report to the department, as the department shall request, regarding children in legal custody or under supervision of the county agency.

History: 1977 c. 449

SUBCHAPTER XIII

CHILD WELFARE AGENCIES

48.60 Child welfare agencies licensed.

(1) No person shall receive children with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months' period for 4 or more such children at any one time unless he obtains a license to operate a child welfare agency from the department.

(2) This section does not include:

(a) A relative or guardian who provides care and maintenance for such children;

(b) A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation;

(c) A public agency;

(d) A hospital, maternity hospital, maternity home, nursing home or tuberculosis sanatorium licensed, approved or supervised by the department;

(e) A licensed foster home.

(f) Institutions for mentally deficient children, which institutions have a full-time child population of not less than 150 children and which are subject to examination as provided in s. 46.03(5).

(3) Before issuing any license to a child welfare agency under this section, the department shall review the need for the additional

placement resources that would be made available by the licensing or relicensing of any child welfare agency after August 5, 1973 providing care authorized under s. 48.61 (3). The department shall not make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for such additional placement resources.

History: 1973 c. 90; 1975 c. 39.

48.61 Powers and duties of child welfare agencies. A child welfare agency shall have authority:

(1) To accept legal custody of children transferred to it by the court under s. 48.355;

(2) To contract with any parent or guardian or other person for the supervision or care and maintenance of any child;

(3) To provide appropriate care and training for children in its legal custody and, if licensed to do so, to place children in licensed foster homes and licensed group homes;

(4) To provide for the moral and religious training of children in its legal custody according to the religious belief of the child or his parents;

(5) If licensed to do so, to accept guardianship of children when appointed by the court, and to place children under its guardianship for adoption;

(6) To provide services to the court under s. 48.07;

(7) To license foster homes in accordance with s. 48.75 if licensed to do so.

History: 1977 c. 354 s. 101; 1977 c. 418, 449.

SUBCHAPTER XIV

FOSTER HOMES

48.62 Licensing of foster homes. (1) No person may receive, with or without transfer of legal custody, 4 or fewer children to provide care and maintenance for those children unless he or she obtains a license to operate a foster home from the department or from a county agency or licensed child welfare agency as provided in s. 48.75.

(2) Relatives as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) or a guardian of a child, who provide care and maintenance for a child, are not required to obtain the license specified in this section. The department or a county agency or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home to those relatives who have no duty of support under s. 52.01 (1) (a)

and who request a license to operate a foster home.

History: 1977 c. 354 s. 101; 1977 c. 418, 447.

Foster homes owned, operated or contracted for by the department or a county agency are immune from local zoning ordinances. Foster homes owned, operated or contracted for by licensed child welfare agencies are not immune. All family operated foster homes are subject to local zoning. Municipal foster home licensing ordinances are unenforceable. 63 Atty Gen 34

State-licensed foster homes are immune from local zoning ordinances restricting number of unrelated occupants of single family dwellings. 66 Atty. Gen. 342.

48.625 Licensing of group homes. No person may receive, with or without transfer of legal custody, 5 to 8 children, to provide care and maintenance for those children unless that person obtains a license to operate a group home from the department.

History: 1977 c. 418.

NOTE: See s. 48.66 for the department's licensing authority.

48.63 Restrictions on placements. (1)

Acting pursuant to court order or voluntary agreement, the child's parent or guardian or the department, a county agency performing child welfare services under s. 48.56 (1) or a child welfare agency licensed to place children in foster homes, may place a child or negotiate or act as intermediary for the placement of a child in a foster home. Placements made under this subsection under a voluntary agreement shall be for a period of time not to exceed 6 months and shall not be extended. The 6-month limitation does not apply to placements made with the consent of a parent or guardian under ss. 48.34 and 48.345.

(2) No parent or guardian, except a licensed child welfare agency or public agency authorized to place children for adoption, may place a child in a foster home for adoption without obtaining the written approval of the circuit court prior to placement, and no person shall receive a child into his or her home for adoption without the prior written approval for placement having been received from the court. Every person appointed to furnish services to the court under ss. 48.06 and 48.07 is eligible to petition the circuit court for approval of a foster home for placement of a child. The circuit court shall, before taking action to approve or disapprove, have an investigation of the facts and a report made by the department, a county agency performing child welfare services under s. 48.56 or a child welfare agency licensed to place children in foster homes. The report on the investigation for placement shall be filed with the circuit court within 30 days after entry of the circuit court's order for the investigation unless the time is extended by the circuit court for good cause shown. If the circuit court does not approve, it

shall refer the matter to the court assigned to exercise jurisdiction under this chapter for appropriate action.

(3) No person may place a child or offer or hold himself or herself out as able to place a child, except as provided in this section. Enrollment of a child by a parent or guardian in an educational institution shall not constitute a placement for the purposes of this section.

History: 1977 c. 354, 449.

48.64 Placement of children in foster homes and group homes. (1) FOSTER HOME AND GROUP HOME AGREEMENTS.

If the department, a county agency specified in s. 48.56, or a child welfare agency authorized to do so, places a child in a foster home under a court order or voluntary agreement under s. 48.63, it shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home or group home for 6 months or more, the department or agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child shall not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days from the receipt of the notice, whichever is later, unless the safety of the child requires it. If the safety of the child requires earlier removal, s. 48.19 shall apply. If a child is removed from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

(2) **SUPERVISION OF FOSTER HOME AND GROUP HOME PLACEMENTS.** Every child in a foster home or group home shall be under the supervision of a county agency, specified in s. 48.56, a child welfare agency authorized to place children in foster homes or group homes, or of the department.

(4) **ORDERS AFFECTING THE HEAD OF A HOME OR THE CHILDREN.** (a) Any decision or order issued by a division of the department of health and social services, a county welfare department or department of social services, or a child welfare agency affecting the head of a foster or group home or the children involved may be appealed to the department of health and social services under fair hearing procedures established under department rules. The department shall, upon receipt of such petition, give the head of the home reasonable notice and opportunity for a fair hearing. The department may make

such additional investigation as it deems necessary. Notice of the hearing shall be given to the head of the home and to the division, the county department or child welfare agency. They shall be entitled to be represented at the hearing. At all hearings conducted under this subsection, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78, to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. A continuance for a reasonable period of time shall be granted when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department and shall be available to the head of the home or the representative, at a place accessible to them, at any reasonable time. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in a departmental or agency action being appealed shall participate in the final administrative decision on such action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home, the division, the county department or the child welfare agency. The decision shall be binding on all parties concerned.

(b) Judicial review of the department's decision may be had as provided in ch. 227.

(c) The circuit court for the county where the child is has jurisdiction upon petition of any interested party over a child who is placed in a foster home or group home. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of said agency involving the placement and care of the child. The court shall determine the case so as to promote the best interests of the child.

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449.

Cross Reference: See 48.47 for provision that appeals from juvenile court under sub. (4) are to the court of appeals.

Foster parents' rights were violated by department's failure to give mandatory written notice under (1) but, since adoptive placement was found to be in children's best interest,

foster parents' rights were subordinated to paramount interest of children. In matter of Z, 81 W (2d) 194, 260 NW (2d) 246.

SUBCHAPTER XV

DAY CARE CENTERS

48.65 Day care centers licensed. (1) No person shall for compensation provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day unless he obtains a license to operate a day care center from the department.

(2) This section does not include:

(a) A relative or guardian of a child who provides care and supervision for the child; or

(b) A public or parochial school, or the Young Men's Christian Association; or

(c) A person employed to come to the home of the child's parent or guardian for less than 24 hours a day.

SUBCHAPTER XVI

LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, AND DAY CARE CENTERS

48.66 Licensing duties of the department. The department shall license and supervise child welfare agencies, as required by s. 48.60, group homes, as required by s. 48.625, shelter care facilities, as required by s. 48.48 and day care centers, as required by s. 48.65. The department may license foster homes, as provided by s. 48.62, and may license and supervise county departments of social services or public welfare as provided in s. 48.43 (1) (am) in accordance with the procedures specified in ss. 48.67 to 48.74.

History: 1975 c. 307; 1977 c. 29, 271, 418, 447.

48.67 Rules governing child welfare agencies, day care centers, foster homes, shelter care facilities and county departments of social services or public welfare. (1) The department shall prescribe rules establishing minimum requirements for the issuance of licenses to and establishing standards for the operation of child welfare agencies, day care centers, foster homes, shelter care facilities and county departments of social services or public welfare. These rules shall be designed to protect and promote the health, safety and welfare of the children in the care of all licensees. The department shall consult with the department of industry, labor and human relations and the department of public instruction before prescribing these rules.

(2) The department shall prescribe application forms to be used by all applicants for licenses from it.

(3) The department shall prescribe the form and content of records to be kept and information to be reported by persons licensed by it. Child welfare agencies and group homes shall report upon application for renewal of licensure all formal complaints regarding their operation filed under s. 48.745 (2) and the disposition of each.

History: 1975 c. 307; 1977 c. 29, 205, 271, 418, 447.

48.675 Foster care education program.

(1) **DEVELOPMENT OF PROGRAM.** The department shall develop a foster care education program to provide specialized training for persons operating family foster homes. Participation in the program shall be voluntary and shall be limited to persons operating foster homes licensed under s. 48.62 and caring for children with special treatment needs.

(2) **APPROVAL OF PROGRAMS.** The department shall promulgate rules for approval of programs to meet the requirements of this section. Such programs may include, but need not be limited to: in-service training; workshops and seminars developed by the department or by county departments of social services; seminars and courses offered through public or private education agencies; and workshops, seminars and courses pertaining to behavioral and developmental disabilities and to the development of mutual support services for foster parents. The department may approve programs under this subsection only after consideration of relevant factors including level of education, useful or necessary skills, location and other criteria as determined by the department.

(3) **SUPPORT SERVICES.** The department shall provide funds from the appropriation under s. 20.435 (4) (b) to enable foster parents to attend education programs approved under sub. (2) and shall promulgate rules concerning disbursement of such funds. Moneys disbursed under this subsection may be used for the following purposes:

(a) Care of residents of the foster home during the time of participation in an education program.

(b) Transportation to and from an education program.

(c) Course materials and fees.

(d) Specialized workshops, seminars, and courses pertaining to behavioral and developmental disabilities.

History: 1977 c. 418.

48.68 Investigation of applicant; granting of license. (1)

After receipt of an application

for a license, the department shall investigate to determine if the applicant meets all minimum requirements for a license adopted by the department under s. 48.67. Upon satisfactory completion of this investigation, the license shall be granted.

(2) Before renewing the license of any child welfare agency or group home, the department shall consider all formal complaints filed under s. 48.745 (2) and the disposition of each during the current license period.

(3) Within 10 working days after receipt of an application for initial licensure of a child welfare agency or group home, the department shall notify the city, town or village planning commission, or other appropriate city, town or village agency if there is no planning commission, of receipt of the application. The department shall request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards which may affect the health and safety of the residents of the child welfare agency or group home. No license may be granted to a child welfare agency or group home until the 30-day period has expired or until the department receives the response of the planning commission or agency, whichever is sooner. In granting a license the department shall give full consideration to such hazards determined by the planning commission or agency.

History: 1977 c. 205, 418.

48.69 Provisional licenses. A provisional license for a period of 6 months may be issued to any child welfare agency, day care center or county department of social services or public welfare whose services are needed, but which is temporarily unable to conform to all established minimum requirements. This provisional license may be renewed for 6-month periods up to 2 years.

History: 1975 c. 307; 1977 c. 271.

48.70 Provisions of licenses. (1) GENERAL. Each license shall bear the name of the person licensed, describe the premises included and state the maximum number of children who can be received and their age and sex.

(2) **SPECIAL PROVISIONS FOR CHILD WELFARE AGENCY LICENSES.** Licenses to child welfare agencies shall also specify the kind of child welfare work the agency is authorized to undertake, whether it may accept guardianship of children, whether it may place children in foster homes, and if so, the area it is equipped to serve.

(4) **SPECIAL PROVISIONS FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES OR PUBLIC WELFARE AND COUNTY CHILDREN'S BOARDS.**

Licenses to county departments of social services or public welfare shall specify whether the department may accept guardianship of children and place such children for adoption.

History: 1973 c. 90; 1975 c. 307; 1977 c. 271.

48.71 Expiration and revocation of licenses. (1) All licenses issued by the department shall be for any term not to exceed 2 years from the date of issuance. No license shall be transferable. Licenses may be revoked by the department because the licensee has substantially violated any provision of this chapter or of the rules of the department adopted pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license.

(2) The department shall give the licensee written notice of any revocation and of the grounds for the revocation. The written notice shall be given at least 30 days prior to any revocation and the revocation shall take place only if the violation remains substantially uncorrected at the end of the 30-day notice period.

History: 1973 c. 90.

48.72 Appeal procedure. Any person aggrieved by the department's refusal or failure to issue or renew a license or by its revocation of a license has the right to an administrative hearing provided for contested cases in ch. 227. Judicial review of the department's decision may be had as provided in ch. 227.

48.73 Inspection of licensees. The department may visit and inspect each child welfare agency, foster home and day care center licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license.

48.74 Authority of department to investigate alleged violations. Whenever the department is advised or has reason to believe that any person is violating any of the provisions of ss. 48.60, 48.62 or 48.65, it shall make an investigation to determine the facts. For the purposes of this investigation, it shall have authority to inspect the premises where the violation is alleged to occur. If it finds that the person is violating any of the specified sections, it may either issue a license if the person is qualified or may institute a prosecution under s. 48.76.

48.745 Formal complaints regarding child welfare agencies and group homes.

(1) If a complaint is received by a child welfare agency or group home, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the

complaining party of the procedure for filing a formal complaint under this section.

(2) Any individual may file a formal complaint under this section regarding the general operation of a child welfare agency or group home and shall not be subject to reprisals for doing so. All formal complaints regarding child welfare agencies and group homes shall be filed with the county public welfare department on forms supplied by the county department unless the county department designates the department to receive formal complaints. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the bureau within the department which licenses child welfare agencies and group homes.

NOTE: Sub. (2) is shown as affected by chapters 205 and 418, laws of 1977, as directed by 13.93 (2) (c). Chapter 418 purported to take into account sub. (2) as created by chapter 205, but left out the words "All formal" at the start of the 2nd sentence.

(3) Upon receipt of a formal complaint, the county department may investigate the premises and records and question the licensee, staff and residents of the child welfare agency or group home involved. The county department shall attempt to resolve the situation through negotiation and other appropriate means.

(4) If no resolution is reached, the county department shall forward the formal complaint, results of the investigation and any other pertinent information to the unit within the department which is empowered to take further action under this chapter against the facility. The unit shall review the complaint and may conduct further investigation, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the final disposition of the complaint and the reasons therefor. If the complaint is dismissed, the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

(5) If the county department designates the department to receive formal complaints, the subunit under s. 46.03 (22) (c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

History: 1977 c. 205, 418.

48.75 Foster homes licensed by county agencies and by child welfare agencies.

(1) Child welfare agencies, if licensed to do so by the department, and county agencies, specified in s. 48.56 (1) to furnish child welfare services, may license foster homes under the

rules adopted by the department under s. 48.67 governing the licensing of foster homes. All such licenses shall be for a term not to exceed one year from date of issuance, shall not be transferable, and may be revoked by the agency or by the department because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department adopted pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license. The licensee shall be given written notice of any revocation and the grounds therefor.

(2) Any foster home applicant or licensee of a county agency or a child welfare agency may, if aggrieved by the failure to issue or renew its license or by revocation of its license, appeal as provided in s. 48.72.

48.76 Penalties. Any person who violates s. 48.60, 48.62 or 48.65 may be fined not more than \$500 or imprisoned not more than one year in county jail or both.

History: 1977 c. 418 s. 929 (18).

48.77 Injunction against violations. In addition to the penalties provided in s. 48.76, the circuit courts shall have jurisdiction to prevent and restrain by injunction violations of s. 48.60, 48.62 or 48.65. It shall be the duty of the district attorneys, upon request of the department, to institute action for such injunction under ch. 813.

History: Sup. Ct. Order, 67 W (2d) 773; 1977 c. 418 s. 929 (18).

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

48.78 Confidentiality of records. Records kept or information received by the department, county agencies specified in s. 48.56, licensed child welfare agencies, licensed day care centers and licensed maternity hospitals regarding individuals in their care or legal custody shall not be open to inspection or their contents disclosed except by order of the court. This section does not apply to the confidential exchange of information between these agencies or other social welfare or law enforcement agencies regarding individuals in the care or legal custody of one of the agencies.

Since a juvenile has a constitutional right to both inspect and reply to a hearing examiner's report, 48.78 does not prevent a juvenile from having access to such a report. State ex rel. R.R. v. Schmidt, 63 W (2d) 82, 216 NW (2d) 18.

Exclusions of 48.78, Stats. 1969, relating to confidentiality of child welfare records apply to advisory committees but not to county welfare boards. The statute does not preclude release of non-identifying data to such committees. 59 Atty. Gen. 240.

SUBCHAPTER XVIII

COMMUNITY SERVICES

48.79 Powers of the department. The department shall have authority and power:

(1) To collect and to collaborate with other agencies in collecting statistics and information useful in determining the cause and amount of delinquency and crime in this state or in carrying out the powers and duties of the department.

(2) To render assistance to communities in their efforts to combat delinquency and social breakdown likely to cause delinquency and crime and assist them in setting up programs for co-ordinating the total community program, including the improvement of law enforcement.

(3) To assist schools in extending their particular contribution in locating and helping children vulnerable to delinquency and in improving their services to all youth.

(4) To assist communities in setting up recreational commissions and to assist them in extending and broadening recreational programs so as to reach all children.

(5) To assist in extending the local child care programs so as to reach all homes needing such help.

(6) To assist in recruiting and training voluntary leaders for youth-serving organizations.

(7) To assist localities in securing needed specialized services such as medical, psychiatric, psychological and social work services when existing agencies are not able to supply them.

(8) To assist localities in making surveys of needs and available resources.

(9) To assist in appraising the achievement of local programs.

(10) To serve in a general consultative capacity, acting as a clearing house, developing materials, arranging conferences and participating in public addresses and radio programs.

(11) To develop and maintain an enlightened public opinion in support of a program to control delinquency.

48.80 Municipalities may sponsor activities.

(1) Any municipality is hereby authorized and empowered to sponsor the establishment and operation of any committee, agency or council for the purpose of co-ordinating and supplementing the activities of public and private agencies devoted in whole or in part to the welfare of youth therein. Any municipality may appropriate, raise and expend funds for the purpose of establishing and of providing an executive staff to such committees, agencies or councils; may levy taxes and appropriate money for recreation and welfare projects; and may

also receive and expend moneys from the state or federal government or private persons for such purposes.

(2) No provision of this section shall be construed as vesting in any youth committee, council or agency any power, duty or function enjoined by law upon any municipal officer, board or department or as vesting in such committee, council or agency any supervisory or other authority over such officer, board or department.

(3) In this section municipality means a county, city, village or town.

SUBCHAPTER XIX

ADOPTION OF MINORS

48.81 Who may be adopted. Any minor present within this state at the time the petition for adoption is filed may be adopted.

48.82 Who may adopt. The following persons are eligible to adopt a minor if they are residents of this state:

(1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the minor;

(2) An unmarried adult;

(3) When practicable, the petitioners shall be of the same religious faith as the natural parents of the person to be adopted. No person shall be denied the benefits of this chapter because of a religious belief in the use of spiritual means of prayer for healing.

(5) Although otherwise qualified, no person shall be denied the benefits of this section because he is deaf, blind or has other physical handicaps.

48.83 Jurisdiction and venue. (1) The circuit court of the county where the child is shall, upon the filing of a petition for adoption of such child, have exclusive jurisdiction over such child which jurisdiction shall continue until such petition is withdrawn, denied or granted. Venue shall be in the county where the child is at the time of the filing of the petition.

(2) If the adoption is denied, the jurisdiction over the child shall immediately revert to the court which appointed the guardian.

History: 1975 c. 39; 1977 c. 449 s. 497.

48.84 Persons required to consent to adoption. (1) No adoption of a minor may be ordered without the written consent of the following to the adoption of the minor by the petitioner:

(a) The parent or parents, if living, provided that consent shall not be required from one whose parental rights have been legally terminated; or

(b) The minor himself if he is 14 or older.

(2) (a) The consent required by sub. (1) (a) shall be given in writing before a judge of any court of record, unless the court orders otherwise, after the judge has explained to the parent that such consent is irrevocable, except as provided in s. 48.86, and has examined the parent and is satisfied that the parent gives his consent voluntarily. In the case of a minor parent, his minority shall not be grounds for revoking consent, but a guardian ad litem shall be appointed for him and his consent shall be effective only when concurred in by the written consent of the guardian ad litem.

(b) The consent of the minor required by sub. (1) (b) shall be given in writing before the circuit court unless otherwise ordered.

(3) The consent of the father of a minor born out of wedlock and not subsequently legitimated or adopted shall be necessary unless his rights have been legally terminated.

(4) In the case of a minor brought to this state pursuant to the displaced persons act of 1948, as amended, a certification of the displaced persons commission or of the department stating that such child is available for adoption shall be in lieu of any further proof of death of parents, valid release by parents, termination of parental rights or other similar requirements.

History: 1973 c. 263; 1977 c. 449.

See note to 48.42, citing *State ex rel. Lewis v. Lutheran Social Services*, 59 W (2d) 1, 207 NW (2d) 826

There is no authority holding that in an adoption proceeding the grandparents accede to whatever rights the natural parents may have had. *Adoption of Randolph*, 68 W (2d) 64, 227 NW (2d) 634.

48.841 Persons required to file recommendation as to adoption. (1) No adoption of a minor may be ordered without the written recommendation, favorable or unfavorable, of the guardian of the minor, if there is one, as set forth in s. 48.85.

(2) If the guardian refuses or neglects to file its recommendation within the time specified in s. 48.85, the court may proceed as though the guardian had filed a favorable recommendation.

48.85 Recommendation of guardian. (1) At least 10 days prior to the hearing, the guardian shall file its recommendation with the court.

(2) The guardian's recommendation shall be presumed to be in the best interests of the child unless the fair preponderance of the credible evidence is to the contrary. If the guardian's recommendation is in opposition to the granting of the petition, the court shall take testimony as

to whether or not the proposed adoption is in the best interests of the child.

(3) At the conclusion of the hearing, the court shall enter its order in accordance with s. 48.91 (3).

History: 1973 c. 263

48.86 Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, to the person seeking to withdraw consent and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of an order of adoption renders any consent irrevocable.

48.87 Filing of consents. Written consents required by s. 48.84 shall be filed with the court at the time of the filing of the petition.

48.871 Filing of recommendation by guardian. In the case of a recommendation by a guardian, the guardian shall file with its recommendation satisfactory evidence of its authority to file such recommendation relative to the adoption of the minor. In the case where the parents' rights have been judicially terminated, this evidence shall be a certified copy of the order terminating their rights and appointing the guardian. In other cases of a guardian appointed by a court, this evidence shall be a certified copy of the order appointing it guardian. In the case of a guardian having the authority to consent or file its recommendation under an instrument other than a court order, valid under the laws of another state, that instrument shall serve as evidence of the authority to consent or file its recommendation.

48.88 Notice of hearing; Investigation.

(1) (a) Upon the filing of a petition, the court shall set a time and place for hearing the petition, allowing time for the investigation and report required by sub. (2), which must be received prior to the hearing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any; to the agency making the investigation, and to the department when its recommendation is required by s. 48.89.

(b) After a petition for adoption is filed the court may determine the placement of the child until the hearing on adoption is completed.

(2) (a) Upon the filing of a petition, the court shall order a licensed child welfare agency or a county agency specified in s. 48.56 to make an investigation of the environment and antecedents of the person to be adopted to ascertain whether the person is a proper subject for adoption and of the home of the petitioner to determine whether it is a suitable home. The court may request the department to perform such a study and the department may furnish such requested service. The agency making the investigation shall make a report to the court within 90 days of the entry of the order for hearing unless the time is reduced for good cause shown by the petitioner or extended by the court. The report shall be part of the record of the proceedings.

(b) The investigation and report required by par. (a) is not necessary where the guardian of the child whose recommendation is required files a favorable recommendation and such guardian is either the department, a licensed child welfare agency or a county department of social services or public welfare authorized by s. 48.57 to accept guardianship of a child; but that agency shall file with the court a report on its investigation of the environment and antecedents of the person to be adopted and of the home of the petitioners.

(3) If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the court, raises a serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem for the minor whose adoption is proposed. The guardian ad litem may have witnesses subpoenaed and present proof at the hearing.

History: 1975 c. 39, 199, 307; 1977 c. 271.

48.89 Recommendation of the department. (1) The recommendation of the department is required for the adoption of the following minors:

(a) A minor born out of wedlock and not subsequently legitimated or adopted;

(b) A minor who has no living parents or whose parents have had their rights legally terminated;

(c) A nonresident minor;

(d) A minor whose nonresident parent has executed a written consent to the adoption, valid at the time of its execution.

(2) The department shall make its recommendation to the court within 90 days of the entry of the order for hearing unless the time is extended by the court. The recommendation shall be part of the record of the proceedings.

(3) The recommendation of the department shall not be required if the recommendation of that department, a licensed child welfare

agency, a county department of social services or public welfare or a county children's board authorized by s. 48.57 to accept guardianship of a child is required by s. 48.841, or if one of the petitioners is a stepparent.

History: 1973 c. 263; 1977 c. 271

48.90 Preadoption residence. (1) No petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months, except where:

(a) One of the petitioners is related to the child by blood, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents; or

(b) The petitioner is related to the child as a stepparent; or

(c) The petition is accompanied by a written approval of the guardian.

(2) Where the placement of the child proposed to be adopted was in violation of s. 48.98 or 48.992, no petition may be filed unless there is an affirmative showing that the petitioners have complied with the provisions of the section violated.

History: 1973 c. 263; 1977 c. 354; 1977 c. 418 s. 929 (18)

Once administrative proceedings have commenced under 48.64 and the person with whom the child had been placed is seeking a review of the removal order, a children's court has no jurisdiction of an attempted adoption. Adoption of Shawn, 65 W (2d) 190, 222 NW (2d) 139.

48.91 Hearing; order. (1) The hearing may be in chambers unless an interested person objects. The petitioner and the minor to be adopted, if 14 or older, shall attend unless the court orders otherwise.

(2) In an adoption proceeding for a child born out of wedlock and not subsequently legitimated or adopted, the court shall establish whether the rights of any persons have been determined under s. 48.425 or by a similar procedure in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed under s. 48.425 prior to any action on the petition for adoption.

(3) If after the hearing and a study of the report required by s. 48.88 and the recommendation required by s. 48.89, the court is satisfied that the necessary consents or recommendations have been filed and that the adoption is in the best interests of the child, the court shall make an order granting the adoption. The order may change the name of the minor to that requested by petitioners.

History: 1973 c. 263.

Meaning of "best interests of the child" discussed. Adoption of Tachick, 60 W (2d) 540, 210 NW (2d) 865.

48.911 Appeal in adoption proceedings. Notwithstanding the provisions of chs. 808, 809

and 879, any appeal from an order in an adoption proceeding is limited to 40 days from the date of the entry of the order.

History: Sup. Ct. Order, 67 W (2d) 773; 1977 c. 187 s 135

48.92 Effect of adoption. (1) After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents.

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and his natural parents, unless the natural parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist.

(3) Rights of inheritance by, from and through an adopted child are governed by s. 851.51.

(4) Nothing in this section shall be construed to abrogate the right of the department to make payments to adoptive families under s. 48.48 (12).

History: 1973 c. 90.

A valid adoption of petitioner by his aunt would preclude his right to inherit as the son of his natural mother, although he would be entitled to inherit as a nephew. *Estate of Komarr*, 68 W (2d) 473, 228 NW (2d) 681.

48.93 Records closed. (1) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file. No person shall have access to such records except on order of the court for good cause shown. No person in charge of adoption records shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by the court.

(2) All correspondence and papers, relating to the investigation, which are not a part of the court record, except those in the custody of agencies authorized to place children for adoption shall be transferred to the department and placed in its closed files.

48.94 New birth certificate. After entry of the order granting the adoption the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the new birth certificate. Whenever the parents by adoption request, or the adopting parent and his spouse who is the natural parent of the person adopted request, that the birth certificate for the person adopted be not changed, then the court shall so order. In such event no new birth certificate shall be filed by the state registrar of vital statistics, notwithstanding the provisions of s. 69.33 or any other law of this state.

48.95 Withdrawal or denial of petition. If the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the department, a licensed child welfare agency, a county department of social services in counties having a population of 500,000 or more, a county department of public welfare or a county children's board licensed for such purpose by the department, the minor shall remain in the legal custody of that department or agency.

History: 1977 c. 271, 449.

48.96 Subsequent adoption. The adoption of an adopted person is authorized and, in that case, the references to parent and natural parent are to adoptive parent.

48.97 Foreign adoption orders. When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the state department or a county department authorized to make adoption placements has approved of the adoptive parents and adoptive home. A child whose adoption would otherwise be valid under this section may be readopted in accordance with this chapter if such readoption is necessary under federal law to permit the child to enter this country.

History: 1971 c. 187.

48.975 Subsidized adoption. (1) DEFINITION. In this section, "subsidized adoption" means payments by the department to the parents of an adopted child which are designed to assist in the cost of care of a child after legal adoption.

(2) APPLICABILITY. The department may subsidize an adoption only when it has determined that such assistance is necessary to assure the child's adoption.

(3) TYPES. Either type of adoption subsidy specified in this subsection may be granted alone or in conjunction with the other.

(a) Maintenance. For support of a child who was in foster care immediately prior to adoption, the maintenance subsidy shall be equivalent to the amount of that child's foster care payment. For support of a child not in foster care immediately prior to placement with a subsidy, the subsidy shall be equivalent to the uniform foster care rate.

(b) *Medical.* A medical assistance subsidy shall be sufficient to pay expenses due to a physical, mental or emotional condition of the child which is not covered by a health insurance policy insuring the child or the parent.

(4) **PROCEDURE.** A written agreement shall be made prior to legal adoption only for children in the guardianship of the department or other agency authorized to place children for adoption. The subsidy may be continued after the child reaches the age of 18 if that child is a full-time high school student.

(5) **RULES.** The department shall promulgate rules necessary to implement this section.
History: 1977 c. 418.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

48.98 Interstate placement of children.

(1) No person shall bring or cause to be brought or send or cause to be sent into this state or take, or cause to be taken, or send, or cause to be sent, out of this state any child for the purpose of placing such child in a foster home or of procuring his adoption, without first obtaining the consent of the department.

(2) Such consent by the department shall be given only upon the following conditions:

(a) Any person who brings or sends children into this state for the purpose of placing such children in foster homes or of procuring their adoption must file with the department a bond to the state of Wisconsin, approved by the department, in the penal sum of \$1,000, conditioned that he will not bring or send into this state any child who is incorrigible or unsound of mind or body and that he will remove any such child who becomes a public charge or who, in the opinion of the department, becomes a menace to the community prior to his adoption or becoming of legal age, and conditioned further that all placements shall be made under the same conditions as placements may be made by licensed child welfare agencies. The department may waive the bond herein provided for, whenever in the opinion of said department such waiver is warranted. This paragraph shall not apply to child welfare agencies licensed in this state and no bond shall be required from such agencies.

(b) Before any child is brought or sent into this state or taken from or sent out of this state for placement in a foster home, the person bringing, taking or sending such child must obtain a certificate from the department that such home is a suitable home for such child.

(c) The person bringing, taking or sending such child into or out of this state, shall make a report to the department, at least once each year

and at such other times as the department may require, as to the location and well-being of such child, until he shall be 18 years of age or until he shall be legally adopted.

(3) The department may make all necessary rules for the enforcement of this section, not in conflict therewith, and all persons bringing, taking or sending children into or out of this state shall comply with all such rules.

(4) This section applies only to those interstate placements of children which are not covered under s. 48.99 [48.988].

History: 1977 c. 354.

48.981 Abused or neglected children. (1)

DEFINITIONS. In this section:

(a) "Abuse" means any physical injury inflicted on a child by other than accidental means, or sexual intercourse or sexual contact under s. 940.225. In this paragraph, "physical injury" includes but is not limited to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14).

(b) "Child" means any person under 18 years of age.

(c) "County agency" means the county child welfare agency as defined in s. 48.56 (1).

(d) "Neglected child" means a child whose parent, guardian, legal custodian or other person exercising temporary or permanent control over the child neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(2) **PERSONS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE OR NEGLECT.** A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, or any other medical or mental health professional, social or public assistance worker, school teacher, administrator or counselor, child care worker in any day care center or child caring institution or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected shall report as provided in sub. (3). Any other person having reason to believe that a child has been abused or neglected may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

(3) **PROCEDURES.** (a) *Initial report.* Persons required to report under sub. (2) shall immediately contact, by telephone or personally, the county agency, sheriff or city police department and shall inform the agency or department of the facts and circumstances contributing to a suspicion of child abuse or neglect. The sheriff

or police department shall within 24 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county agency all cases reported to it. The county agency may require that a subsequent report be made in writing.

(b) *Duties of local law enforcement agencies.*

1. Any person reporting suspected abuse or neglect of a child may request an immediate investigation by the sheriff or police department if the person has reason to believe that the child's health or safety is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the child's health or safety is in immediate danger and take any necessary action to protect the child.

2. If an investigation reveals sufficient evidence under s. 48.19 (1) (d) 5 to establish reasonable cause to believe that any child's health or safety is in immediate danger, the investigating officer shall place the child in protective custody and deliver the child to the county agency.

3. If the police or other law enforcement officials determine that criminal action is necessary, they shall refer the case to the district attorney for criminal prosecution.

(c) *Duties of county agencies.* 1. The county agency shall act in accordance with s. 48.57. Within 24 hours of the receipt of an initial report of suspected child abuse or neglect, the county agency shall commence an appropriate and thorough investigation to determine whether the report is "indicated" or "unfounded". The complete investigation shall, if possible, include a visit to the child's home or usual place of abode, observation of the child and an interview with the child and the child's parents or custodians.

2. Additionally, within 72 hours after receipt of an initial report the county agency shall complete and forward to the department under sub. (7) a preliminary investigative report containing the name, address, age and sex of each child involved and the type of abuse or neglect suspected. The preliminary report shall not contain any information which identifies any person other than the child.

3. An investigative report shall be classified as "indicated" or "unfounded". A finding of "indicated" for child abuse reports shall be supported by a preponderance of the evidence available to the agency; a finding of "indicated" for neglect reports shall be supported by a clear and convincing preponderance of the evidence available to the agency. Whenever there is less than the required standard of evidence indicating child abuse or neglect, the report shall be classified as "unfounded". The county agency director or his or her designee shall review and

approve the investigative report prior to transmitting the report to the central registry. The person reviewing and approving the report shall not have participated in investigating the suspected abuse or neglect. A report shall not be classified "indicated" solely because the child's parent, or another person exercising temporary or permanent control over the child's care, in good faith selects and depends upon spiritual means or prayer for treatment or cure of disease or for remedial care of the child. This subdivision does not preclude a court from ordering that medical services be provided for the child, if the child's health requires it. Reports classified as "indicated" shall include a description of the services being provided to the child and those responsible for his or her care, as well as all relevant dispositional information, and shall be updated at 6-month intervals. The agency shall make findings as required under this subdivision no later than 60 days after receipt of an initial report, and shall immediately transmit the investigative report to the central registry under sub. (8).

4. After transmitting its investigative report to the central registry, the agency shall destroy its reports concerning cases of child abuse or neglect classified as "unfounded".

5. The county agency may hold temporary physical custody of a child delivered under this section for 24 hours, or a longer period as necessary, not to exceed 72 hours, if the custody period extends over a weekend or holiday, and shall immediately notify the parent, guardian or legal custodian and the juvenile court that it is holding the child in physical custody. Within the time period specified, the agency shall either apply to the court for emergency legal custody under s. 48.19 (1) (c) or return the child to the parent or guardian. The application shall not be considered binding in any other proceeding relating to child abuse or neglect or termination of parental rights or in any criminal child abuse or neglect prosecution.

6. The county agency shall take necessary steps to protect other children in the home.

7. The investigator shall inform any person required to report suspected cases of child abuse or neglect that the report was unfounded or that steps were taken to protect the health and welfare of a child who is the subject of a report made by the person. At least one contact shall be made under this subdivision within 60 days after receipt of the initial report by the agency.

8. The county agency shall cooperate with law enforcement officials, courts of competent jurisdiction and other human service agencies to prevent, identify and treat child abuse and neglect. To the extent possible, the county agency shall coordinate the development and provision

of services to children found to be abused or neglected under this section.

9. The county agency shall forward a copy of its investigative report of alleged child abuse or neglect alleging that a child's safety is endangered, classified as "indicated" or "unfounded", to the central registry under sub. (8).

(d) *Independent investigation.* If an agent of an investigating agency is the subject of the initial report, an independent investigation shall be conducted by the department or by another agency designated by the department.

(4) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed.

(5) **CORONER'S REPORT.** Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney, the department, the county agency and, if the institution making the report initially is a hospital, to the hospital.

(6) **PENALTY.** Whoever wilfully violates this section by failure to file a report as required, may be fined not more than \$100 or imprisoned not more than 6 months or both.

(7) **FILE OF PRELIMINARY REPORTS.** The department shall maintain preliminary reports filed under sub. (3) (c) 2 in a separate file. The reports shall not be copied or duplicated, and all information contained therein shall be confidential except as provided in this subsection. The department may, in response to an inquiry from a county agency about a specific child, notify the agency only that a preliminary report has been filed which names the child and identify the county agency which filed the report. Each preliminary report shall be destroyed 60 days after receipt. No information from the preliminary report may be placed in the central registry.

(8) **CENTRAL REGISTRY.** (a) The department shall maintain a confidential statewide central registry of child abuse and neglect reports made under sub. (3) (c) 3. The registry shall receive and maintain written reports under

sub. (3) (c) 3 from county agencies of suspected child abuse or neglect cases and shall transmit information to authorized persons and agencies under sub. (10).

(b) The central registry shall be operated in such a manner as to enable the department to:

1. Provide historical information to aid local child protective service agencies in determining adequate and necessary services for abused children and their families, including immediate identification and location of prior reports of child abuse and neglect.

2. Serve as a case management tool for the department in reviewing the adequacy of local child protective efforts.

3. Aid research efforts aimed at increasing the general knowledge of child abuse and neglect.

(c) Reports of child abuse and neglect shall be maintained at the central registry in one of 2 categories: unfounded or indicated.

1. A report may be classified as "indicated" only when such a finding is supported by the required standard of evidence available to the county agency, as provided in sub. (3) (c) 3. Indicated reports may be maintained in the central registry only when supplemental information as required under sub. (3) (c) 3 is attached.

2. A report determined by the county agency to be "unfounded" shall be classified "unfounded by reason of insufficient evidence".

(d) Investigative reports classified as "indicated" shall contain the following information: the names and addresses of the child and the child's parents or other persons responsible for his or her health and welfare; the child's age, sex and race; the nature and extent of the child's abuse or neglect, including any evidence of prior injuries, abuse or neglect, to the child or siblings; the names of the persons alleged to be responsible for the abuse or neglect; family composition, including names, ages, sexes and races of other children in the home; demographic data related to census tract data; the source of the report; the person making the report, his or her occupation, and where the reporter can be reached; and the medical, legal or social disposition, including a description of any services provided. The names, addresses and all other identifying characteristics of persons named in such investigative reports shall not be placed in the central registry until the requirements of sub. (9) are met.

(e) Investigative reports classified as "unfounded" shall contain all the information required under par. (d) except names, addresses and other identifying characteristics of the persons specified in par. (d).

(f) An "indicated" report and all names, addresses and other identifying characteristics

placed in the central registry from an "indicated" report shall be destroyed 7 years after receipt of the report, unless representatives of the county agency show good reason why the information should not be destroyed.

(9) NOTIFICATION AND HEARING. (a) Within 24 hours after receipt of an investigative report classifying any case as "indicated" under sub. (3) (c) 3, a notice of the finding shall be sent by registered mail or by personal contact from the department to the suspected person. The notice shall contain the following information:

1. An explanation of the finding of "indicated".

2. An explanation that unless a hearing is requested within 15 days from the date of the notice, the names, addresses and other identifying characteristics of persons named in the report shall be placed on the central registry.

3. A description of individuals and institutions who have access to information contained in the central registry.

4. An explanation of the procedure for requesting a hearing, a brief description of the purpose of the hearing and the hearing process, including a statement that the hearing will be held no later than 30 days after a request is made, and a statement that the suspected person has a right to representation by counsel at the hearing at his or her expense.

(b) The department shall keep a record of the notice indicating the manner in which notice was given, the name and position of the person giving notice, the name of the person notified and the time and place of the notification. The information contained in this record shall not be placed on the central registry until the deadline for requesting a hearing has passed without a request being made or if a request for a hearing is made, until after a decision by the hearing examiner sustaining the finding of "indicated" in the investigative report.

(c) The suspected person shall have a right to a hearing no later than 30 days after the request is made. The person has a right to a hearing to determine whether the finding of "indicated" in the investigative report is based on inaccurate or insufficient evidence which would justify reclassifying the report as unfounded or modifying the information to be placed on the central registry consistent with the findings of the hearing examiner. The county agency shall be given notice of the hearing and the burden of proof in the hearing shall be on the county agency. In the hearing, the fact that there was a court finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

(d) The department shall comply with the findings of the hearing examiner regarding the

reclassification of a report or the modification of information to be placed on the central registry and if the report is reclassified as "unfounded", shall destroy the report but may maintain in the central registry the information specified in sub. (8) (e). Any notices, records and other documents relating to the hearing shall be confidential and shall not be made available to any individual or institution except by court order.

(10) CONFIDENTIALITY. (a) 1. All reports and records made under this section and maintained by the department, county agencies, the central registry and other appropriate persons, officials and institutions shall be confidential, except that confidentiality of and access to preliminary investigative reports maintained by the department shall be governed solely by sub. (7). Information shall not be made available to any individual or institution except to:

a. The subject of any report, except that the department or other governmental agency shall not release data that would identify the initial reporter;

b. Appropriate staff of the department or county agencies, who may release information to their agents or to an attending physician for treatment and diagnosis, but prior reports or a lack of prior reports shall not be the basis for the determination of whether child abuse or neglect has occurred;

c. Any court conducting child protective proceedings or any court conducting dispositional proceedings under subch. VI in which child abuse or neglect is an issue; and

d. Any person engaged in bona fide research, with the permission of the department, provided, however, that information identifying the subjects of the reports and the reporters shall not be made available to the researcher.

2. Notwithstanding subd. 1, if the parents are the subject of a report, they may authorize the information to be made available to other persons. The authorization shall be in writing.

3. In this paragraph:

a. "County agency agent" means a foster parent or other person given custody of the child or a human service professional of a community board under s. 51.42 if the professional is working with the child under contract with or under the supervision of the county agency.

b. "Subject" means the child, parents and any person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report.

c. "Reporters" means all persons and institutions who report abuse or neglect under this section.

(b) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in

the central registry and in reports and records made under this section may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(11) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department and county agencies to the extent feasible shall conduct continuing education and training programs for state and county department staff, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation and coordination among all agencies in the identification, prevention and treatment of child abuse and neglect. The department and county agencies shall develop public information programs about child abuse and neglect.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department or a county agency may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department or county agency shall give priority to parental organizations combating child abuse and neglect.

(12) ANNUAL REPORTS. No later than August 1 of each year the department shall prepare and transmit to the governor and the legislature a report on the status of child abuse and neglect programs. The report shall include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

History: Sup. Ct. Order, 59 W (2d) R3; 1977 c 355; 1977 c. 447 s. 210.

48.985 Legal disability of minors removed when borrowing money for educational purposes. (1) Minors who enter into contracts for loans to defray the expenses of

attending any college or university shall, if they are at least 18 years of age, have full legal capacity to act in their own behalf in the matter of such contracts, and with respect thereto shall have all the rights, powers and privileges and be subject to the obligations of persons of full age.

(2) To come under this section, the text of any such loan contract shall state that the loan is to be used only to further the education of the recipient.

48.987 Earnings of self-supporting minors. During any time when a parent of a minor neglects or refuses to provide for his support, or for his support and education, the earnings of such minor shall be his sole property as against such parent or any creditor of such parent.

History: 1977 c. 354 s. 94.

48.988 Interstate compact on the placement of children. (1) The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I

Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II

Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employe thereof; a subdivision of a party state, or officer or employe thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which

sends, brings or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Article III

Conditions for Placement.

(a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date and place of birth of the child.
- (2) The identity and address or addresses of the parents or legal guardian.
- (3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending

agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV

Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V

Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI

Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII

Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII

Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or a guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX

Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations

under, this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X

Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(2) Financial responsibility for any child placed under the interstate compact on the placement of children shall be determined in accordance with the provisions of article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of ch. 52 or of any other applicable state law fixing responsibility for the support of children also may be invoked.

(3) The "appropriate public authorities" as used in article III of the interstate compact on the placement of children means the department of health and social services, and said department shall receive and act with reference to notices required by article III.

(4) As used in paragraph (a) of article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" means the state department of health and social services.

(5) The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under paragraph (b) of article V of the interstate compact on the placement of children. Any agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in the case of the state.

(6) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed

pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of article V of the interstate compact on the placement of children.

(7) Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under article V of the interstate compact on the placement of children and shall retain jurisdiction as provided in article V thereof.

(8) As used in article VI of the interstate compact on the placement of children, the term "executive head" means the governor.

History: 1977 c. 354, 447

48.989 Interstate compact on the placement of children: additional procedure.

(1) **DEFINITIONS.** In this section and in s. 48.988:

(a) "Appropriate authority in the receiving state" means the department of health and social services.

(b) "Appropriate public authorities" means the department of health and social services, which shall receive and act with reference to notices required by article III.

(c) "Executive head" means the governor.

(2) **FINANCIAL RESPONSIBILITY.** Financial responsibility for any child placed under the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of article V. In the event of partial or complete default of performance under the compact, the provisions of ch. 52 or of any other applicable state law fixing responsibility for the support of children may also be invoked.

(3) **INTERSTATE AGREEMENTS.** The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under par. (b) of article V of the interstate compact on the placement of children. Any agreement which contains a financial commitment or imposes a financial obligation on this state or any subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in matters involving the state and of the chief local fiscal officer in matters involving a subdivision of the state.

(4) **REQUIREMENTS.** Any requirement for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed under an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof under par. (b) of article V of

the interstate compact on the placement of children.

(5) **COURT JURISDICTION.** Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under article V of the interstate compact on the placement of children. The court shall retain jurisdiction as provided in article V of the compact.

History: 1977 c. 354, 447.

48.991 Interstate compact on juveniles.

The following compact, by and between the state of Wisconsin and any other state which has or shall hereafter ratify or legally join in the same, is ratified and approved:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

Article I

Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) co-operative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake co-operatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II

Existing Rights and Remedies.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III

Definitions.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV

Return of Runaways.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall

set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the

return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to legal custody of such minor.

Article V

Return of Escapees and Absconders.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to

remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of

any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

Article VI

Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV (a) or of Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII

Co-operative Supervision of Probationers and Parolees.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until

discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII

Responsibility for Costs.

(a) That the provision of Articles IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this compact.

Article IX

Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X

Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state

receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

Article XI

Acceptance of Federal and Other Aid.

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII

Compact Administrators.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII

Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV

Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements,

and shall not be subject to the 6 months' renunciation notice of the present Article.

Article XV

Severability.

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Cross Reference: See appendix for a list of states which have ratified this compact

48.992 Definitions. As used in the interstate compact on juveniles, the following words and phrases have the following meanings as to this state:

(1) "Executive authority" means the compact administrator.

(2) (a) The "appropriate court" of this state to issue a requisition under Article IV of the compact is the court assigned to exercise jurisdiction under this chapter for the county of the petitioner's residence, or, if the petitioner is a child welfare agency, the court so assigned for the county where the agency has its principal office, or, if the petitioner is the department, any court so assigned in the state.

(b) The "appropriate court" of this state to receive a requisition under Article IV or V of the compact is the court assigned to exercise jurisdiction under this chapter for the county where the juvenile is located.

History: 1977 c. 449.

48.993 Juvenile compact administrator.

(1) Pursuant to the interstate compact on juveniles, the governor may designate an officer or employe of the department of health and social services to be the compact administrator, who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. He shall serve subject to the pleasure of the governor. Whenever there is a vacancy in the office of compact administrator or in the case of his absence or disability, his functions shall be performed by the secretary of health and social services, or other employe designated by the

secretary of the department. The compact administrator may cooperate with all departments, agencies and officers of and in the government of this state and its political subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state.

(2) The compact administrator shall determine for this state whether to receive juvenile probationers and parolees of other states under Article VII of the interstate compact on juveniles and shall arrange for the supervision of each such probationer or parolee received, either by the department or by a person appointed to perform supervision service for the court assigned to exercise jurisdiction under this chapter for the county where the juvenile is to reside, whichever is more convenient. Such persons shall in all such cases make periodic reports to the compact administrator regarding the conduct and progress of the juveniles.

History: 1977 c. 449.

48.994 Supplementary agreements. The department may enter into supplementary agreements with appropriate officials of other states pursuant to Article X of the interstate compact on juveniles. In the event that such supplementary agreement requires or contemplates the use of any institution or facility of this state or the provision of any service by this state, said supplementary agreement shall have no effect until approved by the department or agency under whose jurisdiction said institution or facility is operated or which shall be charged with the rendering of such service.

48.995 Financial arrangements. The expense of returning juveniles to this state pursuant to the interstate compact on juveniles shall be paid as follows:

(1) In the case of a runaway under Article IV, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he is able to do so, shall order that he pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of said expense as the court finds he is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he may be proceeded against for contempt.

(2) In the case of an escapee or absconder under Article V or Article VI, if the juvenile is in the legal custody of the department, it shall bear the expense of his or her return; otherwise the

appropriate court shall, on petition of the person entitled to the juvenile's custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for the person's actual and necessary expenses. In this subsection "appropriate court" means the court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state under Article VII of the compact, then the court assigned to exercise jurisdiction under this chapter for the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition under Article VI, the person entitled to the juvenile's legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns the juvenile; but if the person is financially unable to pay all the expenses he or she may petition the court assigned to exercise jurisdiction under this chapter for the county of the petitioner's residence for an order arranging for the transportation as provided in sub. (1). The court shall inquire summarily into the financial ability of the petitioner and, if it finds the petitioner is unable to bear any or all of the

expense, the court shall arrange for the transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for the person's actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of the expense as the court finds the petitioner is able to pay. If the petitioner fails, without good cause, or refuses to pay that sum, he or she may be proceeded against for contempt.

History: 1977 c 354, 447, 449.

48.996 Fees. Any judge of this state who appoints counsel or a guardian ad litem pursuant to the provisions of the interstate compact on juveniles may, in his discretion, allow a reasonable fee to be paid by the county on order of the court.

48.997 Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its political subdivisions shall enforce the interstate compact on juvenilee and shall do all things appropriate to the effectuation of its purposes which may be within their respective jurisdictions.