

CHAPTER 48

CHILDREN'S CODE

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

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

SUBCHAPTER I

GENERAL PROVISIONS

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

(a) While recognizing that the paramount goal of this chapter is to protect children, to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents, whenever appropriate, in fulfilling their parental responsibilities. The courts and agencies responsible for child welfare should assist parents in changing any circumstances in the home which might harm the child or which may require the child to be placed outside the home. The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their return to the family.

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

(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and

permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the child for the child to be removed from his or her parents, consistent with any applicable law relating to the rights of parents.

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

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

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

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

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

(gg) To promote the adoption of children into stable families rather than allowing children to remain in the impermanence of foster or treatment foster care.

(gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child.

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

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

- (a) A member of an Indian tribe, as defined in 25 USC 1903 (8).
- (b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

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

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 affirmation 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.

“Paramount consideration” of child’s best interest under (2) does not mandate that the child’s interests will always outweigh the public’s. In Interest of B.B., 166 W (2d) 202, 479 NW (2d) 205 (Ct. App. 1991).

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

See note to 48.48, citing Roe v. Borup, 500 F Supp. 127 (1980).

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

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

48.02 Definitions. In this chapter, unless otherwise defined:

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

- (a) Physical injury inflicted on a child by other than accidental means.
- (b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.
- (c) A violation of s. 948.05.
- (d) Permitting, allowing or encouraging a child to violate s. 944.30.
- (e) A violation of s. 948.055.
- (f) A violation of s. 948.10.

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

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

(1e) “Alcohol and other drug abuse impairment” means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted.

(1m) “Alcoholism” has the meaning given in s. 51.01 (1m).

(1s) “Approved treatment facility” has the meaning given in s. 51.01 (2).

(2) “Child” means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, “child” does not include a person who has attained 17 years of age.

(2c) “Child caring institution” means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

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

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

(2g) “County department” means a county department under s. 46.215, 46.22 or 46.23, unless the context requires otherwise.

(2m) “Court”, when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

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

(4) “Department” means the department of health and family services.

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

(5g) “Drug dependent” has the meaning given in s. 51.01 (8).

(5j) “Emotional damage” means harm to a child’s psychological or intellectual functioning. “Emotional damage” shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.

(5m) “Foreign jurisdiction” means a jurisdiction outside of the United States.

(6) “Foster home” means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children unless all of the 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” means the person named by the court having the duty and authority of guardianship.

(9s) “Integrated service plan” has the meaning given in s. 46.56 (1) (g).

(10) “Judge”, if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

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

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

(12m) “Nonidentifying social history information” means information about a person’s birth parent that may aid the person in establishing a sense of identity. “Nonidentifying social history information” may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

- (a) Age at the time of the person’s birth.
- (b) Nationality.
- (c) Race.
- (d) Education.
- (e) General physical appearance.
- (f) Talents, hobbies and special interests.
- (h) Reason for placing the child for adoption or for the termination of parental rights.
- (i) Religion.
- (k) Family history.

(m) Personality traits of each parent.

(13) “Parent” means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, “parent” includes a person 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.

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

(15) “Relative” means a parent, grandparent, stepparent, 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 of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(17) “Shelter care facility” means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66 (1).

(17m) “Special treatment or care” means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(17q) “Treatment foster home” means any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), that is operated under the supervision of the department, a county department or a licensed child welfare agency, and that provides to no more than 4 children care, maintenance and structured, professional treatment by trained individuals, including the treatment foster parents.

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

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 W (2d) xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448.

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

See note to 767.24, citing *In re Marriage of Westrate v. Westrate*, 124 W (2d) 244, 369 NW (2d) 165 (Ct. App. 1985).

Deceased parent under (13) continues to be parent; deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F., 168 W (2d) 62, NW (2d) 803 (1992).

A viable fetus is a “person” within the definition of a child under sub. (2). *State ex rel. Angela M.W. v. Kruzicki*, 197 W (2d) 532, 541 NW (2d) 482 (Ct. App. 1995).

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

48.023 Guardianship. Except as limited by an order of the court under s. 48.977 (5) (b), a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

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

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

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

(4) The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the department of corrections under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or the supervision of a county department under s. 938.34 (4d) or (4n).

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

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

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

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

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

History: 1973 c. 263; 1979 c. 330; 1981 c. 359; 1983 a. 447.

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

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

History: 1975 c. 283.

48.028 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

History: 1981 c. 81.

Where children's code provides additional safeguards, those safeguards should be followed. *In Re Interest of D.S.P.*, 166 W (2d) 464, 480 NW (2d) 234 (1992).

SUBCHAPTER II

ORGANIZATION OF COURT

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

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter and ch. 938, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which elected, the judge shall receive expenses as provided under s. 753.073.

History: 1971 c. 46; 1977 c. 187 s. 135; 1977 c. 273, 449; 1989 a. 56; 1995 a. 77.

48.035 Court; Menominee and Shawano counties. Menominee county is attached to Shawano county for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and ch. 938 and the office and functions of the judge of the court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter and ch. 938 of the circuit court for Menominee and Shawano counties shall serve in both counties. The county boards of Menominee county and Shawano county shall enter into an agreement on administration of this section and the prorating

of expenditures involved, and for such purposes the county board of supervisors of Menominee county may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief judge of the judicial administrative district shall make the determination.

History: 1977 c. 449; 1995 a. 77.

48.04 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 of supervisors determines.

History: 1977 c. 354, 449; 1985 a. 176.

48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties with a population of 500,000 or more, the 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 is appointed as provided in s. 46.21 (1m) (a). 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, 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 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. The chief judge may delegate his or her supervisory functions under s. 48.065 (1).

3. The county board of supervisors shall develop policies and establish necessary rules for the management and administration of the nonjudicial operations of the children's court center. The director of the center shall report and is responsible to the director of the county department for the execution of all nonjudicial operational policies and rules 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 supervisors 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 county board of supervisors 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 county board of supervisors also has the authority to investigate, arbitrate and resolve any conflict in the administration of the center as between judicial and nonjudicial operational policy and rules. The county board of supervisors 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) 1. All intake workers beginning employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers to satisfy the requirements specified under subd. 1.

3. Each intake worker whose responsibilities include investigation or treatment of child abuse or neglect shall successfully complete additional training in child abuse and neglect protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under subd. 1.

(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. 46.495.

(2) COUNTIES WITH A POPULATION UNDER 500,000. (a) In counties having less than 500,000 population, the county board of supervisors shall authorize the county department or court or both to provide intake services required by s. 48.067 and the staff needed to carry out the objectives and provisions of this chapter under s. 48.069. Intake services shall be provided by employes of the court or county department and may not be subcontracted to other individuals or agencies, except any county which had intake services subcontracted from the county sheriff's department on April 1, 1980, may continue to subcontract intake services from the county sheriff's department. Intake workers shall be governed in their intake work, including their responsibilities for recommending the filing of a petition and entering into an informal disposition, by general written policies which shall be formulated by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(b) 1. All intake workers beginning employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this paragraph according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers to satisfy the requirements specified under subd. 1.

(c) Each intake worker whose responsibilities include investigation or treatment of child abuse or neglect shall successfully complete additional training in child abuse and neglect protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under par. (b).

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

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

is reimbursed for county administration under s. 46.495, except as provided in s. 301.26. Counties having a population of less than 500,000 may use funds received under ss. 46.495 (1) (d) and 301.26, including county or federal revenue sharing funds allocated to match funds received under s. 46.495 (1) (d), for the cost of providing court attached intake services in amounts not to exceed 50% of the cost of providing court attached intake services or \$30,000 per county per calendar year, whichever is less.

History: 1971 c. 125; 1975 c. 39, 199, 302, 307, 422; 1977 c. 271; 1977 c. 354 ss. 10 to 14, 101; 1977 c. 447, 449; 1979 c. 34, 300; 1981 c. 20 s. 2202 (20) (o); 1981 c. 93 s. 186; 1981 c. 314, 329; 1983 a. 239; 1985 a. 29, 176; 1987 a. 151, 399; 1991 a. 274; 1995 a. 27.

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. The chief judge may assign law clerks, bailiffs and deputies to the court commissioner. The chief judge shall supervise juvenile court commissioners, law clerks, bailiffs and deputies, except that the chief judge may delegate any of those duties.

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

- (a) Issue summonses.
- (b) Conduct hearings under s. 48.21 and thereafter order a child held in or released from custody.
- (d) Conduct plea hearings.
- (e) Enter into consent decrees.
- (f) Conduct prehearing conferences.
- (gm) Conduct uncontested proceedings under s. 48.13.
- (gr) Hold hearings, make findings and issue temporary restraining orders in proceedings under s. 813.122 in which the respondent is a child.
- (gs) Hold hearings, make findings and issue orders in proceedings under s. 813.125 in which the respondent is a child.
- (h) Perform such other duties, not in conflict with this chapter, as the judge may direct.

(3) The juvenile court commissioner may not:

- (b) Conduct fact-finding or dispositional hearings except as provided in sub. (2) (gm).
- (c) Make dispositions other than approving consent decrees and other than dispositions in uncontested proceedings under s. 48.13.
- (d) Conduct hearings for the termination of parental rights or for adoptions.
- (e) Make changes in placements of children, or revisions or extensions of dispositional orders, except in uncontested proceedings under s. 48.13.
- (g) Conduct hearings, make findings or issue orders in proceedings under s. 48.977.

(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 upon the request of any interested party.

History: 1977 c. 354, 449; 1979 c. 300, 331, 355, 359; 1981 c. 314; 1987 a. 151; 1989 a. 56; 1991 a. 39; 1993 a. 318, 377; 1995 a. 77, 275.

Authority to conduct plea hearings under sub. (2) (d) must be granted by a judge, not the judge assigned to the specific case. In Interest of Joshua M.W. 179 W (2d) 335, 507 NW (2d) 141 (Ct. App. 1993).

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 the child has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the child is or the hour is unreasonable, as defined by written court intake rules, and if the child meets the criteria under s. 48.208, the intake worker, after consulting by telephone with the law enforcement officer who took the child into custody, may authorize the secure holding of the child while the intake worker is en route to the in-person interview or until 8 a.m. of the morning after the night on which the child was taken into custody.

(3) Determine whether the child 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 policies promulgated under s. 48.06 (1) or (2);

(6m) Conduct the multidisciplinary screen in counties that have a pilot program under s. 48.547.

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

(7m) At the request of a minor who claims to be pregnant, assist the minor in preparing a petition to initiate a proceeding under s. 48.375 (7) and file the petition with the clerk of circuit court.

(8) Make interim recommendations to the court concerning children 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; 1979 c. 300; 1987 a. 151, 339; 1991 a. 263; 1993 a. 98.

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

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

(b) Offer individual and family counseling.

(c) Make an affirmative effort to obtain necessary or desired services for the child and the child's family 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) A court or county department responsible for disposition staff may agree with the court or county department responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

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

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1989 a. 31, 107; 1993 a. 98, 385; 1995 a. 27 ss. 2428m, 2428p, 9126 (19); 1995 a. 77.

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

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

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

(4) COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES. Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a child if special treatment or care has been ordered under s. 48.345 (6) and if s. 48.362 (4) applies.

History: 1975 c. 39; 1977 c. 271, 354, 447; 1979 c. 34; 1981 c. 314 s. 146; 1983 a. 27 s. 2202 (20); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446; 1995 a. 27, 77.

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 the person's supervision and shall report thereon as the judge directs.

(2) Any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 and 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking a child into physical custody when the child comes voluntarily or is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

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

Judge may order department to provide information on foster care placements in county. In Interest of J. A. 138 W (2d) 483, 406 NW (2d) 372 (1987).

48.09 Representation of the interests of the public.

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

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

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

History: 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 246; 1995 a. 77, 275.

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; 1979 c. 331, 359; 1995 a. 77.

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

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

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

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

History: 1977 c. 449.

SUBCHAPTER III

JURISDICTION

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

(1) Who is without a parent or guardian;

(2) Who has been abandoned;

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

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

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

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

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

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

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

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

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

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

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

A viable fetus is a "person" within the definition of a child under s. 48.02 (2). The court has jurisdiction over the child under circumstances described in this section and a compelling interest in promoting and protecting the potential life of the fetus. Because of that compelling interest, the court may order protective custody of that child even though such custody requires custody of the mother as well and the court may not have jurisdiction over the mother. State ex rel. Angela M.W. v. Kruzicki, 197 W (2d) 532, 541 NW (2d) 482 (Ct. App. 1995).

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

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

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

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

(1) The termination of parental rights to a minor in accordance with subch. VIII.

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

(a) For a minor, where parental rights have been terminated under subch. VIII; or

(b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a) and 48.977 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

(3) The adoption of children.

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

(6) Consent to marry under s. 765.02.

(7) Appeals under s. 115.81.

(8) Runaway children, but only as provided under s. 48.227 for the limited purpose described in that section.

(9) Proceedings under s. 146.34 (5).

(10) Proceedings under s. 813.122 or 813.125 in which the respondent is a child.

(11) Granting visitation privileges under s. 880.155.

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275.

Conflicts arising in the case of concurrent jurisdiction of two courts discussed. Interest of Tiffany W. & Myokra W. 192 W (2d) 407, 532 NW (2d) 135 (Ct. App. 1995).

48.15 Jurisdiction of other courts to determine legal custody. Nothing contained in ss. 48.13 and 48.14 deprives other courts of the right to determine the legal custody of children by habeas corpus or to determine the legal custody or guardianship of children if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under

this chapter and ch. 938 is paramount in all cases involving children alleged to come within the provisions of ss. 48.13 and 48.14.

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

Judicial Council Note, 1981: Reference to "writs" of habeas corpus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613–A]

48.16 Jurisdiction over petitions for waiver of parental consent to a minor's abortion. Any circuit court within this state has jurisdiction over a proceeding under s. 48.375 (7) for waiver of the parental consent requirement under s. 48.375 (4).

History: 1991 a. 263.

48.185 Venue. (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.135 and 48.14 (1) to (9) 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 proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child's parent pursuant to a dispositional order, in which case venue is as provided in sub. (2). Venue for a proceeding under s. 48.14 (10) is as provided in s. 801.50 (5s).

(2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363, 48.365 or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345, 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; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491; 1995 a. 77, 275.

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

SUBCHAPTER IV

HOLDING A CHILD IN CUSTODY

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

(a) A warrant.

(b) A capias issued by a judge under s. 48.28.

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

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

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

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

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

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

7. The child has violated the conditions of an order under s. 48.21 (4) or the conditions of an order for temporary physical custody by an intake worker.

(2) When a child is taken into physical custody as provided in this section, the person taking the child into custody shall immedi-

ately attempt to notify the parent, guardian and legal custodian of the child by the most practical means. The person taking the child into custody shall continue such attempt until the parent, guardian and legal custodian of the child are notified, or the child is delivered to an intake worker under s. 48.20 (3), whichever occurs first. If the child is delivered to the intake worker before the parent, guardian and legal custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian and legal custodian of the child are notified.

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

History: 1977 c. 354, 449; 1979 c. 300; 1985 a. 176; 1989 a. 31, 56, 107; 1993 a. 16, 56, 377, 490; 1995 a. 27, 77.

A viable fetus is a "person" within the definition of a child under s. 48.02 (2). The court has jurisdiction over the child under circumstances described in this section and a compelling interest in promoting and protecting the potential life of the fetus. Because of that compelling interest, the court may order protective custody of that child even though such custody requires custody of the mother as well and the court may not have jurisdiction over the mother. State ex rel. Angela M.W. v. Kruzicki, 197 W (2d) 532, 541 NW (2d) 482 (Ct. App. 1995).

48.20 Release or delivery from custody. (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into custody shall make every effort to release the child immediately to the child's parent, guardian or legal custodian.

(b) If the child's parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, the person who took the child into custody may release the child to a responsible adult after counseling or warning the child as may be appropriate.

(c) If the child is 15 years of age or older, the person who took the child into custody may release the child without immediate adult supervision after counseling or warning the child as may be appropriate.

(d) If the child is a runaway, the person who took the child into custody may release the child to a home authorized under s. 48.227.

(3) If the child is released under sub. (2) (b) to (d), the person who took the child into custody shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released. If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give any child 12 years of age or older a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

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

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

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

(7) (a) When a child is interviewed by an intake worker, the intake worker shall inform any child who is alleged to be in need of protection or services and who is 12 years of age or older of his or her right to counsel.

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

(c) The intake worker may release the child:

1. To a parent, guardian or legal custodian, or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, release the child to a responsible adult, counseling or warning the child as may be appropriate, or, if a child is 15 years of age or older, release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or

2. In the case of a runaway child, to a home authorized under s. 48.227.

(d) If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

(8) If a child is held in custody, the intake worker shall notify the child's parent, guardian and legal custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. If a child who has violated the terms of aftercare supervision administered by the department of corrections or a county department is held in custody, the intake worker shall also notify the department of corrections or county department, whichever has supervision over the child, of the reasons for holding the child in custody, of the child's whereabouts and of the time and place of the detention hearing required under s. 48.21. The parent, guardian and legal custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing. If the parent, guardian or legal custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is alleged to be in need of protection or services and is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian or legal custodian. The intake worker shall notify both the child and the child's parent, guardian or legal custodian.

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

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 cause injury to himself or herself or be subject to injury by others;

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21 (4) that if another child in the home is not held that child will be subject to injury by others;

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate; or

(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21 (4) that another child in the home meets those criteria.

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

(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; 1979 c. 300; 1983 a. 399; 1989 a. 31, 107; 1993 a. 16, 377, 395; 1995 a. 27, 77, 275.

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

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

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

History: 1977 c. 354, 355, 447; 1979 c. 300; 1983 a. 172; 1983 a. 189 s. 329 (5); 1985 a. 332; 1993 a. 446.

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

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the judge in a protective order.

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 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.

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

See note to 785.02, citing In Interest of D. L. D. 110 W (2d) 168, 327 NW (2d) 682 (1983).

See note to 785.02, citing 70 Atty. Gen. 98.

48.209 Criteria for holding a child in a county jail. Subject to the provisions of s. 48.208, a county jail may be used as a

secure detention facility if the criteria under either sub. (1) or (2) are met:

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

- (a) The jail meets the standards for secure detention facilities established by the department of corrections;
- (b) The child is held in a room separated and removed from incarcerated adults;
- (c) The child is not held in a cell designed for the administrative or disciplinary segregation of adults;
- (d) Adequate supervision is provided; and
- (e) The judge reviews the status of the child every 3 days.

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

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

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 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays and legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed where a child is taken into custody under s. 48.19 (1) (b) or (d) 2, or 7, or where the child is a runaway from another state, in which case a written statement of the reasons for holding a child in custody shall be substituted if the petition is not filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays and legal holidays, or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request.

(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 72 hours from the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or 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 neglecting, refusing, unable 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 extension period provided for in this paragraph, the judge or juvenile court commissioner shall order the child's immediate release from custody.

(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 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 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian and to the child if he or she is 12 years of age or older in accordance with s. 48.20 (8).

(d) Prior to the commencement of the hearing, the parent, guardian or legal custodian shall be informed by the court of the allegations that have been made or may be made, the nature and

possible consequences of this hearing as compared to possible future hearings, the right to confront and cross-examine witnesses and the right to present witnesses.

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

(3m) PARENTAL NOTICE REQUIRED. If the child has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the child's parents of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children. If the court is unable to provide the notice before commencement of the hearing, it shall provide the child's parents with the specified information in writing as soon as possible after the hearing.

(4) CONTINUATION OF CUSTODY. If the judge or 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. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian or other responsible person which may be necessary to ensure the safety of the child.

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

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

(b) An order relating to a child held in custody outside of his or her home shall also describe any efforts that were made to permit the child to remain at home and the services that are needed to ensure the child's well-being, to enable the child to return to his or her home and to involve the parents in planning for the child.

(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; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275.

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

When party waives custody hearing pursuant to (3) (a), trial court need not enter written custody order or inform parties of rights; department need not file petition within 24 hours pursuant to (1) (b). In *Interest of G.H.* 150 W (2d) 407, 441 NW (2d) 227 (1989).

The 24 hour period under sub. (1) (a) runs from the time the intake worker decides to hold the child. *Curtis W. v. State*, 192 W (2d) 719, 531 NW (2d) 633 (Ct. App. 1995).

48.215 Mother–young child care program. Sections 48.19 to 48.21 do not apply to children participating in the mother–young child care program under s. 301.049.

History: 1991 a. 39.

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

48.227 Runaway homes. (1) Nothing contained in this section prohibits a home licensed under s. 48.48 or 48.75 from providing housing and services to a runaway child with the consent of the child and the consent of the child's parent, guardian or legal custodian, under the supervision of a county department, a child welfare agency or the department. When the parent, guardian or legal custodian and the child both consent to the provision of these services and the child has not been taken into custody, no hearing as described in this section is required.

(2) Any person who operates a home under sub. (1) and licensed under s. 48.48 or 48.75, when engaged in sheltering a runaway child without the consent of the child's parent, guardian or legal custodian, shall notify the intake worker of the presence of the child in the home within 12 hours. The intake worker shall notify the parent, guardian and legal custodian as soon as possible of the child's presence in that home. A hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) For runaway children who have been taken into custody and then released, the judge may, with the agreement of the persons operating the homes, designate homes licensed under ss. 48.48 and 48.75 as places for the temporary care and housing of such children. If the parent, guardian or legal custodian refuses to consent, the person taking the child into custody or the intake worker may release the child to one of the homes designated under this section; however, a hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian, or legal custodian from conferring with the child or the person operating the home.

(4) (a) If the child's parent, guardian or legal custodian does not consent to the temporary care and housing of the child at the runaway home as provided under sub. (2) or (3), a hearing shall be held on the issue by the judge or juvenile court commissioner within 24 hours of the time that the child entered the runaway home, excluding Saturdays, Sundays and legal holidays. The intake worker shall notify the child and the child's parent, guardian or legal custodian of the time, place and purpose of the hearing.

(b) If, in addition to jurisdiction under par. (c), the court has jurisdiction over the child under ss. 48.13 to 48.14, excluding s. 48.14 (8), or under ss. 938.12 to 938.14, a hearing may be held under s. 48.21 or 938.21.

(c) For the purposes of this section, the court has jurisdiction over a runaway child only to the extent that it may hold the hearings and make the orders provided in this section.

(d) At the hearing, the child, the child's parent, guardian or legal custodian and a representative of the runaway home may present evidence, cross-examine and confront witnesses and be represented by counsel or guardian ad litem.

(e) At the conclusion of the hearing, the court may order:

1. That the child be released to his or her parent, guardian or legal custodian; or

2. That, with the consent of the child and the runaway home, the child remain in the care of the runaway home for a period of not more than 20 days. Without further proceedings, the child shall be released whenever the child indicates, either by statement or conduct, that he or she wishes to leave the home or whenever the runaway home withdraws its consent. During this time period

not to exceed 20 days ordered by the court, the child's parent, guardian or legal custodian may not remove the child from the home but may confer with the child or with the person operating the home. If, at the conclusion of the time period ordered by the court the child has not left the home, and no petition concerning the child has been filed under s. 48.13, 938.12 or 938.13, the child shall be released from the home. If a petition concerning the child has been filed under s. 48.13, 938.12 or 938.13, the child may be held in temporary physical custody under ss. 48.20 to 48.21 or 938.20 to 938.21.

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

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1995 a. 77.

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 held in a secure detention facility shall be represented by counsel at all stages of the proceedings, but a child 15 years of age or older may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver.

(b) 1. If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court. Except as provided in subd. 2., a child 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.

2. If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(c) Any child subject to the jurisdiction of the court under s. 48.14 (5) shall be represented by counsel. No waiver of counsel may be accepted by the court.

(cm) Any minor who is subject to the jurisdiction of the circuit court under s. 48.16 and who is required to appear in court shall be represented by counsel.

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

(3) **POWER OF THE COURT TO APPOINT COUNSEL.** Except in proceedings under s. 48.13, at any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. The court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.

(3m) **GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN.** The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child shall not be the same as counsel for any party or any governmental or social agency involved.

(4) **PROVIDING COUNSEL.** In any situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly and voluntarily waived, the court shall refer the person to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a person who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral. Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child. In any situation under sub. (2) in which a parent 18 years of age or older 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 authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

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

(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; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 W (2d) xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77.

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

See note to 48.422, citing *In re Termination of Parental Rights to M. A. M.* 116 W (2d) 432, 342 NW (2d) 410 (1984).

Neither temporary custody order nor custodial interrogation were proceedings under (1) (a). *State v. Woods*, 117 W (2d) 701, 345 NW (2d) 457 (1984).

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

Right to be represented by counsel includes right to effective counsel. *In Interest of M.D.(S)*, 168 W (2d) 996, 485 NW (2d) 52 (1992).

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

48.235 Guardian ad litem. (1) **APPOINTMENT.** (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.

(b) The court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of parental rights.

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

(d) The circuit court may appoint a guardian ad litem for a minor in a proceeding under s. 48.375 (7) to aid the circuit court in determining under s. 48.375 (7) (c) whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of the abortion is in the minor's best interests.

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommenda-

tion has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

(2) **QUALIFICATIONS.** The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, 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.

(3) **DUTIES AND RESPONSIBILITIES.** (a) The guardian ad litem shall be an advocate for the best interests of the person for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of such person or the positions of others as to the best interests of such person. If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of such person, the guardian ad litem shall so inform the court and the court may appoint counsel to represent that person. The guardian ad litem has none of the rights or duties of a general guardian.

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

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

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

(4) **MATTERS INVOLVING CHILD IN NEED OF PROTECTION OR SERVICES.** (a) In any matter involving a child found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.38 and 48.43 (5).

2. Petition for a change in placement under s. 48.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14.

4. Petition for revision of dispositional orders under s. 48.363.

5. Petition for extension of dispositional orders under s. 48.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125.

7. Petition for relief from a judgment terminating parental rights under s. 48.46.

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

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

8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.355 (2) (b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

(5) **MATTERS INVOLVING MINOR PARENT.** The guardian ad litem for a minor parent whose parental rights are the subject of a voluntary termination proceeding shall interview the minor parent, investigate the reason for the termination of parental rights, assess the voluntariness of the consent and inform the minor parent of his or her rights and of the alternatives to, and the effect of, termination of parental rights.

(6) **COMMUNICATION TO A JURY.** In jury trials under this chapter, the guardian ad litem or the court may tell the jury that the guardian ad litem represents the interests of the person for whom the guardian ad litem was appointed.

(7) **TERMINATION AND EXTENSION OF APPOINTMENT.** The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing or on the record that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the entry of the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

(8) **COMPENSATION.** On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, except that compensation shall be paid by the proposed adoptive parents in uncontested termination proceedings and uncontested adoption cases under ss. 48.835 and 48.837 and by the agency in uncontested termination proceedings and uncontested adoptions under s. 48.833. If the proposed adoptive parents are unable to pay, the court may direct that the county of venue pay the compensation, in whole or in part, and may direct that the proposed adoptive parents reimburse the county, in whole or in part, for the payment. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b). At any time before the final order for adoption, the court may order that payments be placed in an escrow account in an amount estimated to be sufficient to pay the compensation of the guardian ad litem.

History: Sup. Ct. Order, 151 W (2d) xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395; 1995 a. 27, 275.

Judicial Council Note, 1990: This section is designed to clarify when a guardian ad litem may or shall be appointed under this chapter; to define the duties of the guardian ad litem; and to require the adoptive parents to pay guardian ad litem fees in independent adoptions and the agency to do so in adoptions pursuant to s. 48.837.

Sub. (1) indicates when a guardian ad litem is to be appointed, leaving broad discretion to the court for such appointments.

Sub. (1) (b) and (c) set forth situations in which a guardian ad litem is required. While there are situations in which adversary counsel are an alternative to a guardian ad litem or more desirable and therefore required under s. 48.23, the committee concluded that the best interests of the child must be reflected by a guardian ad litem in the situations enumerated in these paragraphs.

Sub. (2) continues the qualifications currently in s. 48.235.

Sub. (3) addresses the responsibilities of the guardian ad litem. The guardian ad litem is to be an advocate for the best interests of the person for whom the appointment is made. The definition specifically rejects the view that the guardian ad litem should represent the wishes of the subject when they are different from interests. The guardian ad litem is required to inform the court when the wishes of the person differ from what the guardian ad litem believes to be his or her best interests. The definition also stresses the fact that the guardian ad litem should be independent and function in the same manner as the lawyer for a party. This includes the responsibility to serve appropriate documents, to advocate in accordance with the rules of evidence, to avoid ex parte communication, and the like.

Sub. (4) is designed to suggest the possible duties of a guardian ad litem after a CHIPS order. Continuation of the guardian ad litem is discretionary with the court in such situations, as provided in sub. (7). Sub. (4) specifically permits the continued involvement of the guardian ad litem in permanency planning and in the monitoring of the placement. It also makes it clear that, if it is in the best interests of the child, the guardian ad litem may seek the termination of the parental rights of the parents of the child and prosecute such an action. It is not intended to limit the responsibilities to those noted. The court may require the department to give appropriate notice to the guardian ad litem so the duties can be fulfilled.

Sub. (5) clarifies the responsibilities of the guardian ad litem for minor parents in termination cases, in the way of investigation and communication.

Sub. (6) permits the guardian ad litem or court to explain to the jury that he or she represents the interests of the person. This is to avoid unnecessary confusion.

Sub. (7) provides for the termination of appointment of the guardian ad litem upon entry of the court's final order unless the court extends or reappoints, indicating the scope of continuing responsibility. There are a large number of things a guardian ad litem might do during the period of extension or reappointment, including participate in permanency planning, seek extension or revision of dispositional orders, seek a change in placement and the like. The court might well identify general concerns to which the guardian ad litem should continue to be attentive, leaving to the guardian ad litem the methods to carry out the delegation of responsibility. This subsection also provides for the involvement of the guardian ad litem in appeals, leaving to the guardian ad litem broad discretion as to whether and how to participate. The requirement that the guardian ad litem notify the appellate court if the guardian ad litem chooses not to participate is to ensure that the guardian ad litem reflects on this important decision. The appellate court may require participation, notwithstanding the guardian ad litem's decision.

Sub. (8) retains the current law that, unless the court otherwise orders, the county pays the fees of the guardian ad litem in matters under this chapter, but it creates an exception for uncontested termination proceedings and uncontested adoptions, in which cases the adoptive parents or the agency are required to pay this fee unless the court finds they are unable to do so. The court is given the authority to require advance payment of the guardian ad litem fees into an escrow account. [Re Order effective Jan. 1, 1990]

See note to 48.23, citing *In Interest of T.L.*, 151 W (2d) 725, 445 NW (2d) 729 (Ct. App. 1989).

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

SUBCHAPTER V

PROCEDURE

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

(1m) As part of the intake inquiry, the intake worker shall inform the child and the child's parent, guardian and legal custodian that they may request counseling from a person designated by the court to provide dispositional services under s. 48.069.

(2) (a) As part of the intake inquiry the intake worker may conduct multidisciplinary screens and intake conferences with notice to the child, parent, guardian and legal custodian. If sub. (2m) applies, the intake worker shall conduct a multidisciplinary screen under s. 48.547 if the child has not refused to participate under par. (b).

(b) No child or other person may be compelled to appear at any conference, participate in a multidisciplinary screen, produce any papers or visit any place by an intake worker.

(2m) (a) In counties that have a pilot program under s. 48.547, a multidisciplinary screen shall be conducted for:

2. Any child alleged to be in need of protection and services who has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b) or 125.09 (2) or a local ordinance that strictly conforms to any of those sections.

4. Any child 12 years of age or older who requests and consents to a multidisciplinary screen.

5. Any child who consents to a multidisciplinary screen requested by his or her parents.

(b) The multidisciplinary screen may be conducted by an intake worker for any reason other than those specified in the criteria under par. (a).

(3) If the intake worker determines as a result of the intake inquiry that the child 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 peti-

tion has been filed, informal disposition may not occur or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 48.09, or is dismissed by the judge.

(5) The intake worker shall request that a petition be filed, enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel or other official under s. 48.09 shall receive written notice of such action. If a law enforcement officer has made a recommendation concerning the child, the intake worker shall forward this recommendation to the district attorney, corporation counsel or other official under s. 48.09. With respect to petitioning a child to be in need of protection or services, information received more than 40 days before filing the petition may be included to establish a condition or pattern which, together with information received within the 40-day period, provides a basis for conferring jurisdiction on the court. The judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection.

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

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

Under facts of case, (5) didn't mandate dismissal although referral wasn't made within 40 days. In re J. L. W., 143 W (2d) 126, 420 NW (2d) 398 (Ct. App. 1988).

Under (1), "information indicating that a child should be referred to the court as delinquent" is that quantum of information that would allow a reasonable intake worker to evaluate the appropriate disposition of the matter. In Interest of J.W.T., 159 W (2d) 754, 465 NW (2d) 520 (Ct. App. 1990).

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

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 parents and children 12 years of age or older who are the focus of an inquiry regarding the need for protection or services that the referral may result in a petition to the court and:

- (a) What allegations could be in the petition;
- (b) The nature and possible consequences of the proceedings;
- (c) The right to remain silent and the fact that silence of any party may be relevant;
- (d) The right to confront and cross-examine those appearing against them;
- (e) The right of the child 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 by 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 intake worker shall inform the child, parent, guardian and legal custodian as appropriate of basic rights under this section. This notice shall be given verbally, either in person or by telephone, and in writing. This notice shall be given so as to allow the child, parent, guardian or legal custodian sufficient time to prepare for the plea hearing. This subsection does not apply to cases of informal disposition under s. 48.245.

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

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. 48.13 to 48.14. Informal disposition shall be available only if the facts

persuade the intake worker that the jurisdiction of the court, if sought, would exist and upon consent of the child, parent, guardian and legal custodian.

(2) (a) Informal disposition may provide for any one or more of the following:

1. That the child appear with a parent, guardian or legal custodian for counseling and advice.

2. 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.

3. That the child submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility for an examination of the child's use of alcohol beverages, controlled substances or controlled substance analogs and any medical, personal, family or social effects caused by its use, if the multidisciplinary screen conducted under s. 48.24 (2) shows that the child is at risk of having needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects.

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

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

(c) If the informal disposition provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the child and the child's parent, guardian or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into an informal disposition agreement for the provision of alcohol and other drug abuse outpatient treatment.

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

(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 terminate the informal disposition at any time or object at any time to the fact or terms of the informal disposition. If an objection arises the intake worker may alter the terms of the agreement or recommend to the district attorney or corporation counsel that a petition be filed. If the informal disposition is terminated the intake worker may recommend to the district attorney or corporation counsel that a petition be filed.

(5) Informal disposition shall be terminated upon the request of the child, parent, guardian or legal custodian.

(5m) An informal disposition is terminated if the district attorney or corporation counsel files a petition within 20 days after receipt of notice of the informal disposition under s. 48.24 (5). In such case statements made to the intake worker during the intake inquiry are inadmissible.

(7) If at any time during the period of informal disposition the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the informal disposi-

tion. Within 10 days after the cancellation of the informal disposition, the intake worker shall notify the district attorney, corporation counsel or other official under s. 48.09 of the cancellation and recommend whether or not a petition should be filed. The judge shall dismiss with prejudice any petition which is not filed within the time limit specified in this subsection.

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

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

History: 1977 c. 354; 1979 c. 300, 331, 359; 1985 a. 311; 1987 a. 27, 285, 339, 403; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 275, 448.

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

(2) If the proceeding is brought under s. 48.13, the district attorney, corporation counsel or other appropriate official shall file the petition, close the case, or refer the case back to intake within 20 days after the date that the intake worker's recommendation was filed. A referral back to intake may be made only when the district attorney, corporation counsel or other appropriate official decides not to file a petition or determines that further investigation is necessary. If the case is referred back to intake upon a decision not to file a petition, the intake worker shall close the case or enter into an informal disposition within 20 days. If the case is referred back to intake for further investigation, the appropriate agency or person shall complete the investigation within 20 days. If another referral is made to the district attorney, corporation counsel or other appropriate official, it shall be considered a new referral to which the time limits of this subsection shall apply. The time limits in this subsection may only be extended by a judge upon a showing of good cause under s. 48.315. If a petition is not filed within the time limitations set forth in this subsection and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall dismiss with prejudice a petition which was not timely filed unless the court finds at the plea hearing that good cause has been shown for failure to meet the time limitations.

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

(6) If a proceeding is brought under s. 48.13, any party to or any governmental or social agency involved in the proceeding may petition the court to issue a temporary restraining order and injunction as provided in s. 813.122 or 813.125. The court exercising jurisdiction under this chapter shall follow the procedure under s. 813.122 or 813.125 except that the court may combine hearings authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary restraining order and injunction is not subject to the limitations under s. 813.122 (2) or 813.125 (2) and no fee is required regarding the filing of the petition under s. 813.122 or 813.125.

History: 1977 c. 354; 447; 1979 c. 300, 331, 355, 359; 1985 a. 234; 1993 a. 318; 1995 a. 77.

“Good cause” under (2) defined. In *Interest of F. E. W.*, 143 W (2d) 856, 422 NW (2d) 893 (Ct. App. 1988).

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

Delinquency and waiver petitions must both be filed to bring about a waiver hearing; trial court may not proceed with waiver hearing where time limits under s. 48.25 for delinquency petition are not complied with. In *Interest of Michael J.L.*, 174 W (2d) 131, 496 NW (2d) 758 (Ct. App. 1993).

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.

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

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

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

(3) If the information required under sub. (1) (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 and to the parents, guardian, legal custodian and physical custodian.

(5) Subsections (1) to (4) do not apply to petitions to initiate a proceeding under s. 48.375 (7).

History: 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352.

CHIPS petition which alleged that a child was the victim of sexual abuse but contained no information giving rise to an inference that there was something the court could do for the child which was not already being provided was insufficient. *Interest of Courtney E.* 184 W (2d) 592, 516 NW (2d) 422 (1994).

48.257 Petition to initiate a procedure to waive parental consent prior to a minor’s abortion. (1) A petition to initiate a proceeding under s. 48.375 (7) shall be entitled, “In the interest of ‘Jane Doe’, a person under the age of 18”, and shall set forth with specificity:

(a) The name “Jane Doe” and the minor’s date of birth.

(b) A statement that the minor is pregnant and the estimated gestational age of the fetus at the time that the petition is filed, and a statement that the minor is seeking an abortion.

(c) The name and address of the person who intends to perform or induce the abortion, if known. If that person is not known, the name and address of the clinic or other medical facility that intends to perform or induce the abortion, if known.

(d) A request for waiver of the parental consent requirement under s. 48.375 (4).

(e) A statement alleging that the minor is mature and well-informed enough to make her own decision on whether or not to have an abortion and facts sufficient to establish that the minor is mature enough and well-informed enough to make her own decision.

(f) A statement alleging that, if the circuit court does not find that the minor is mature enough and well-informed enough to make her own decision, the circuit court should find that having an abortion is in the minor’s best interest and facts sufficient to establish that an abortion is in the minor’s best interest.

(g) A statement acknowledging that the minor has been fully informed of the risks and consequences of abortion and the risks and consequences of carrying the pregnancy to term.

(h) If the minor is not represented by counsel, the place where and the manner in which the minor wishes to be notified of proceedings under s. 48.375 (7) until appointment of counsel under s. 48.375 (7) (a) 1. If the petition is filed by a member of the clergy on behalf of the minor, the place where and manner in which the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).

(2) The director of state courts shall provide simplified forms for use in filing a petition under this section to the clerk of circuit court in each county.

(3) The minor who is seeking the abortion shall sign the name “Jane Doe” on the petition to initiate a proceeding under s. 48.375 (7). No other person may be required to sign the petition.

(4) The clerk of circuit court shall give a copy of the petition to the minor or to the member of the clergy who files a petition on behalf of the minor, if any.

(5) The minor, or the intake worker under s. 48.067 (7m), shall file the completed petition under this section with the clerk of circuit court.

(6) No filing fee may be charged for a petition under this section.

History: 1991 a. 263, 315.

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

(2) With reasonable notification to the interested parties and prior to the taking of a plea under s. 48.30, the petition may be amended at the discretion of the court or person who filed the petition. After the taking of a plea, 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; 1979 c. 300; 1995 a. 77.

48.27 Notice; summons. (1) After a petition has been filed relating to facts concerning a situation specified under ss. 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) (a) 1. The court shall also notify, under s. 48.273, the child, any parent, guardian and legal custodian of the child, any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child and any person specified in par. (b), if applicable, of all hearings involving the child except hearings on motions for which notice need only be provided to the child and his or her counsel. Where parents entitled to notice have the same place of residence, notice to one shall constitute notice to the other. The first notice to any interested party, foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written and may have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

2. Failure to give notice under subd. 1. to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) is not given notice of

a hearing under subd. 1. and if the court is required under this chapter to permit that person to make a written or oral statement during the hearing or to submit a written statement prior to the hearing and that person does not make or submit such statement, that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 48.13 and if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.60 and if paternity has not been established, the court shall notify, under s. 48.273, all of the following persons:

a. A person who has filed a declaration of interest under s. 48.025.

b. A person alleged to the court to be the father of the child or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

(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 of his or her right to legal counsel regardless of ability to pay.

(5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify and notify any person who has filed a declaration of interest under s. 48.025 and any person who has been adjudged to be the biological father of the child in a judicial proceeding unless the biological father's rights have been terminated.

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

(8) When a petition is filed under s. 48.13, the court shall notify, in writing, the child's parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the child, as provided under s. 48.275 (2).

(9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only to the minor, her counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and her guardian ad litem, if any. The notice shall contain the title and case number of the proceeding, and the nature, location, date and time of the hearing or other proceeding. Notice to the minor or to the member of the clergy, if any, shall be provided as requested under s. 48.257 (1) (h) and, after appointment of the minor's counsel, if any, by her counsel.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 W (2d) xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275.

48.273 Service of summons or notice; expense.

(1) Service of summons or notice required by s. 48.27 may be made by mailing a copy thereof to the persons summoned or notified. If the persons fail to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, except where the court determines otherwise because the child is in secure custody, and service shall be made personally by delivering to the persons a copy of the summons or notice; except that if the court is satisfied that it is impracticable to serve the summons or notice personally, it may make an order providing for the service of the summons or notice by certified mail addressed to the last-known addresses of the persons. The court may refuse to grant a continuance when the child is being held in secure custody, but in such a case the court shall order that service of notice of the next hearing be made personally or by certified mail to the last-known

address of the person who failed to appear at the hearing. Personal service shall be made at least 72 hours before the time of the hearing. Mail shall be sent at least 7 days before the time of the hearing, except where the petition is filed under s. 48.13 and the person to be notified lives outside the state, in which case the mail shall be sent at least 14 days before the time of the hearing.

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

(3) The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under ss. 48.13 to 48.14, shall be a charge on the county when approved by the court.

(4) (a) Subsections (1) and (3) do not apply to any proceeding under s. 48.375 (7).

(b) Personal service is required for notice of all proceedings under s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the minor shall be in the manner and at the place designated in the petition under s. 48.257 (1) until appointment of the minor's counsel, if any, under s. 48.375 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7) unless the minor waives the immediate notice. If the minor waives the immediate notice, the notice shall be served at least 24 hours before the time of the hearing under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of providing the minor's full signature.

(c) The expenses of service of notice and the travel expenses and fees allowed in ch. 885 incurred by any person who is required to appear, other than the minor who is named in the petition, in any proceeding under s. 48.375 (7) shall be paid by the county in which the circuit court that holds the proceeding is located.

History: 1977 c. 354; 1979 c. 300; 1991 a. 263; 1993 a. 98; 1995 a. 77.

Employing balancing test, court concluded service under this section is applicable to members of Indian tribe. In Interest of M.L.S., 157 W (2d) 26, 458 NW (2d) 541 (Ct. App. 1990).

48.275 Parents' contribution to cost of court and legal services.

(1) If the court finds a child to be in need of protection or services under s. 48.13, 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.

(2) (a) If this state or a county provides legal counsel to a child subject to a proceeding under s. 48.13, the court shall order the child's parent to reimburse the state or county in accordance with par. (b) or (c). The court may not order reimbursement if a parent is the complaining or petitioning party or if the court finds that the interests of the parent and the interests of the child in the proceeding are substantially and directly adverse and that reimbursement would be unfair to the parent. The court may not order reimbursement until the completion of the proceeding or until the state or county is no longer providing the child with legal counsel in the proceeding.

(b) If this state provides the child with legal counsel and the court orders reimbursement under par. (a), the child's parent may request the state public defender to determine whether the parent is indigent as provided under s. 977.07 and to determine the amount of reimbursement. If the parent is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent is found to be indigent in part, the amount of reimbursement shall be the amount of partial payment determined in accordance with the rules of the public defender board under s. 977.02 (3).

(c) If the county provides the child with legal counsel and the court orders reimbursement under par. (a), the court shall either make a determination of indigency or shall appoint the county department to make the determination. If the court or the county department finds that the parent is not indigent or is indigent in

part, the court shall establish the amount of reimbursement and shall order the parent to pay it.

(cg) The court shall, upon motion by a parent, hold a hearing to review any of the following:

1. An indigency determination made under par. (b) or (c).
2. The amount of reimbursement ordered.
3. The court's finding, under par. (a), that the interests of the parent and the child are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent.

(cr) Following a hearing under par. (cg), the court may affirm, rescind or modify the reimbursement order.

(d) Reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the county treasurer, who shall deposit 25% of the amount paid for state-provided counsel in the county treasury and transmit the remainder to the state treasurer. Payments transmitted to the state treasurer shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L). The county treasurer shall deposit 100% of the amount paid for county-provided counsel in the county treasury.

(dm) Within 30 days after each calendar quarter, the clerk of court for each county shall report to the state public defender all of the following:

1. The total amount of reimbursement determined or ordered under par. (b) or (cr) for state-provided counsel during the previous calendar quarter.

2. The total amount collected under par. (d) for state-provided counsel during the previous calendar quarter.

(e) A person who fails to comply with an order under par. (b) or (c) may be proceeded against for contempt of court under ch. 785.

(3) This section does not apply to any proceedings under s. 48.375 (7).

History: 1977 c. 29, 354, 449; 1981 c. 20; 1983 a. 27; 1985 a. 29, 176; 1987 a. 27; 1991 a. 263; 1993 a. 98, 446; 1995 a. 27, 77.

Guardian ad litem fees are not reimbursable under (2) (a). In Interest of G. & L.P. 119 W (2d) 349, 349 NW (2d) 743 (Ct. App. 1984).

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

History: 1977 c. 354 s. 41; Stats. 1977 s. 48.28; 1979 c. 331, 359.

The issuance of a *capias* to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T.J. 181 W (2d) 82, 510 NW (2d) 735 (Ct. App. 1993).

48.29 Substitution of judge. (1) 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. Whenever any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section shall not apply to proceedings under s. 48.21.

(1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another

judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

(3) Subsections (1) to (1m) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom she wishes to be assigned to the proceeding and that judge shall be assigned to the proceeding.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1979 c. 300; 1987 a. 151; 1991 a. 263; 1993 a. 98; 1995 a. 77.

48.293 Discovery. (1) Copies of all law enforcement 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 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.

(3) Upon request prior to the fact-finding hearing, counsel for the interests of the public shall disclose to the child, child's counsel or guardian ad litem the existence of any videotaped oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the requesting person to view the videotaped oral statement. If, subsequent to compliance with this subsection, the state obtains possession, custody or control of such a videotaped statement, counsel for the interests of the public shall promptly notify the requesting person of that fact and make reasonable arrangements for the requesting person to view the videotaped oral statement.

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

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

Judicial Council Note, 1985: Sub. (3) makes videotaped oral statements of children in the possession, custody or control of the state discoverable upon demand by the child, child's counsel or guardian ad litem. These statements may be admissible under s. 908.08, stats. [85 Act 262]

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

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

48.295 Physical, psychological, mental or developmental examination. (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court. The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the

request for such an examination or assessment before ordering the examination or assessment. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

(1c) Reasonable cause is considered to exist to warrant an alcohol and other drug abuse assessment under sub. (1) if the multidisciplinary screen procedure conducted under s. 48.24 (2) indicates that the child is at risk of having needs and problems related to alcohol or other drug abuse.

(1g) If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days after the court order, report the results of the assessment to the court, except that, upon request by the approved treatment facility and if the child is not held in secure or nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child is in need of treatment for abuse of alcohol beverages, controlled substances or controlled substance analogs or education relating to the use of alcohol beverages, controlled substances and controlled substance analogs and, if so, shall recommend a service plan and an appropriate treatment, from an approved treatment facility, or a court-approved education program.

(2) The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel and to the child's counsel. The report shall describe the nature of the examination and identify the persons interviewed, the particular records reviewed and any tests administered to the child. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

(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.

(4) Motions or objections under this section may be heard under s. 807.13.

History: 1977 c. 354; 1979 c. 300; 1985 a. 321; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 339; 1993 a. 474; 1995 a. 77, 225, 448.

Judicial Council Note, 1988: Sub. (4) allows oral argument on motions or objections under this section to be heard by telephone. [Re Order effective Jan. 1, 1988]

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

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

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

(4) Although the taking of a child into custody is not an arrest, it shall be considered an arrest for the purpose of deciding motions which require a decision about the propriety of taking into custody, including but not limited to motions to suppress evidence as illegally seized, motions to suppress statements as illegally obtained and motions challenging the lawfulness of the taking into custody.

(5) If the child 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 cus-

tody 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.

(7) Oral argument permitted on motions under this section may be heard by telephone under s. 807.13 (1).

History: 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 W (2d) xiii (1987); 1995 a. 77.

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

48.299 Procedures at hearings. (1) (a) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. 48.16 unless a public fact-finding hearing is demanded by a child through his or her counsel. However, the court shall refuse to grant the public hearing in a proceeding other than a proceeding under s. 48.375 (7), if a parent or guardian objects.

(ag) In a proceeding other than a proceeding under s. 48.375 (7), if a public hearing is not held, only the parties and their counsel, if any, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), witnesses and other persons requested by a party and approved by the court may be present, except that the court may exclude a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the child or the child's family or if the court determines that excluding the foster parent, treatment foster parent or other physical custodian would be in the best interests of the child. Except in a proceeding under s. 48.375 (7), any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court.

(ar) All hearings under s. 48.375 (7) shall be held in chambers, unless a public fact-finding hearing is demanded by the child through her counsel. In a proceeding under s. 48.375 (7), the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) may be present if requested by a party and approved by the court.

(b) Except as provided in ss. 48.375 (7) (e) and 48.396, any person who divulges any information which would identify the child or the family involved in any proceeding under this chapter shall be subject to ch. 785. This paragraph does not preclude a victim of the child's act from commencing a civil action based upon the child's act.

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

(4) (a) Chapters 901 to 911 shall govern the presentation of evidence at the fact-finding hearings under ss. 48.31, 48.42 and 48.977 (4) (d).

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

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

(5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 48.209 (1) (e) or 48.21 (1) may be held on the record by telephone or live audio–visual means or testimony may be received by telephone or live audio–visual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audio–visual means may be made by telephone.

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

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

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

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

(d) The court may stay the proceedings under this chapter pending the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter and the determination of paternity is necessary to the court's disposition of the child if the child is found to be in need of protection or services.

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

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

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

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

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

NOTE: Sub. (6) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

(7) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice but does not allege that he is the father of the child and state that he wishes

to establish the paternity of the child or if no man to whom such notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforcement under s. 59.458 (1) [59.53 (6) (a)] for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(8) As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the child's mother relating to the child's paternity. A record made under this subsection is admissible in a proceeding to determine the child's paternity under ss. 767.45 to 767.60.

History: 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 W (2d) xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; s. 13.93 (2) (c).

Judicial Council Note, 1988: Sub. (5) allows a judicial review of the status of a child held in a county jail, or a continuation of custody hearing, to be held by telephone conference, or telephoned testimony to be admitted at such a hearing, on request of any party, unless good cause to the contrary is shown. [Re Order effective Jan. 1, 1988]

See note to 48.18, citing In Interest of D.E.D. 101 W (2d) 193, 304 NW (2d) 133 (Ct. App. 1981).

Sub. (1) (am) allows relatives of homicide victims to attend the fact-finding hearing but not the dispositional hearing. In Interest of Shawn B. N. 173 W (2d) 343, 497 NW (2d) 141 (Ct. App. 1992).

48.30 Plea hearing. (1) Except as provided in this subsection, the hearing to determine whether any party wishes to contest an allegation that the child is in need of protection or services shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of a petition for a child who is not being held in secure custody or within 10 days after the filing of a petition for a child who is being held in secure custody.

(2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or be waived. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

(3) If a petition alleges that a child is in need of protection or services under s. 48.13, 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.

(6) If a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days 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 it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of industry, labor and job development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If 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 or plea of no contest 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 the plea or admission and alert unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

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

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

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

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 W (2d) xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417.

The time limits under sub. (1) are mandatory; failure to comply results in the court's loss of competency and is properly remedied by dismissal without prejudice. In *Interest of Jason B.* 176 W (2d) 400, 500 NW (2d) 384 (Ct. App. 1993).

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

48.305 Hearing upon the involuntary removal of a child. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (d) 5, 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; 1979 c. 300.

48.31 Fact–finding hearing. (1) In this section, “fact–finding hearing” means a hearing to determine if the allegations in a petition under s. 48.13 or a petition to terminate parental rights are 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. If a jury trial is demanded in a proceeding under s. 48.13, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim or witness, as defined in s. 950.02, the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts, except that in a case alleging a child to be in need of protection or services under s. 48.13, the court shall make the determination under s. 48.13 (intro.) relating to whether the child is in need of protection or services which can be ordered by the court. If the court finds that the child is not within the jurisdiction of the court or, in a case alleging a child to be in need of protection or services under s. 48.13, that the child is not in need of protection or services which can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

(4) The court or jury shall make findings of fact and the court shall make conclusions of law relating to the allegations of a petition filed under s. 48.13 or 48.42, except that the court shall make findings of fact relating to whether the child is in need of protec-

tion or services which can be ordered by the court. In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court shall not find that the child is suffering emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross–examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child to be in need of protection or services under s. 48.13 (11m), the court shall not find that the child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects unless an assessment for alcohol and other drug abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted by an approved treatment facility.

NOTE: Sub. (4) is shown as affected by 1995 Wis. Act 275 and 1995 Wis. Act 448, s. 39, and as merged by the revisor under s. 13.93 (2) (c).

(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 it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of industry, labor and job development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If all parties consent, the court may immediately proceed with a dispositional hearing.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; s. 13.93 (2) (c).

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

Fact–finding hearing under (1) was not closed until court ruled on motion to set aside verdict. In *Interest of C.M.L.* 157 W (2d) 152, 458 NW (2d) 573 (Ct. App. 1990).

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.

(fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension hearing under s. 48.365 due to the child having run away or otherwise having made himself or herself unavailable to receive that notice.

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

(1m) Subsection (1) (a), (d), (e) and (g) does not apply to proceedings under s. 48.375 (7).

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

History: 1977 c. 354; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98.

Trial court's sua sponte adjournment of fact-finding hearing beyond 30-day limit due to congested calendar constitutes good cause under (2) when adjournment order is entered within 30-day period. In *Matter of J.R.* 152 W (2d) 598, 449 NW (2d) 52 (Ct. App. 1989).

See note to 48.365 citing *In Interest of B.J.N.* 162 W (2d) 635, 469 NW (2d) 845 (1991).

The period under sub. (1) (c) includes the time required to assign the new judge, send any required notices, notify the parties and arrange for time on the court's calendar; applicable time limits for plea hearings apply after the assignment of the new judge. In *Interest of Joshua M.W.* 179 W (2d) 335, 507 NW (2d) 141 (Ct. App. 1993).

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

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

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

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. 48.13 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 shall be reduced to writing and given to the parties.

(2) (a) 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.

(c) 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.

(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 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. 48.13 is subsequently reinstated.

(6) The judge or juvenile court commissioner shall inform the child and the child's parent, guardian or legal custodian, in writing, of the child's right to object to the continuation of the consent decree under sub. (3) and the fact that the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

History: 1977 c. 354; 1985 a. 311; 1987 a. 27, 285, 339; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 448.

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

SUBCHAPTER VI

DISPOSITION

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

(a) The social history of the child.

(b) A recommended plan of rehabilitation or treatment and care for the child which is based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 48.295, which employs the least restrictive means available to accomplish the objectives of the plan, and, in cases of child abuse or neglect, which also includes an assessment of risks to the child's physical safety and physical health and a description of a plan for controlling the risks.

(c) A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family, the persons or agencies that would be primarily responsible for providing those services, and the identity of the person or agency that would provide case management or coordination of services if any or whether or not the child should receive an integrated service plan.

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

(e) A plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled.

(f) If the agency is recommending that the court order the child's parent, guardian or legal custodian to participate in mental health treatment, anger management, individual or family counseling or parent training and education, a statement as to the availability of those services and as to the availability of funding for those services.

(2) HOME PLACEMENT REPORTS. A report recommending that the child remain in his or her home may be presented orally at the

dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record.

(4) OTHER OUT-OF-HOME PLACEMENTS. A report recommending placement in a foster home, treatment foster home, group home or child caring institution shall be in writing and shall include all of the following:

(a) A permanency plan prepared under s. 48.38.

(b) A recommendation for an amount of child support to be paid by either or both of the child's parents or for referral to the county designee under s. 59.53 (5) for the establishment of child support.

(4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (4), the agency shall consider the factors that the court considers under s. 46.10 (14) (c) for deviation from the percentage standard. Prior to the dispositional hearing under s. 48.335, the agency shall provide the child's parent with all of the following:

(a) A copy of its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 46.10 (14) (c).

(c) A written explanation of how the parent may request a revision under s. 48.363 in the amount of child support ordered by the court under s. 48.355 (2) (b) 4.

(5) IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT; CONFIDENTIALITY. If the report recommends placement in a foster home or a treatment foster home, and the name of the foster parent or treatment foster parent is not available at the time the report is filed, the agency shall provide the court and the child's parent or guardian with the name and address of the foster parent or treatment foster parent within 21 days after the dispositional order is entered, except that the court may order the information withheld from the child's parent or guardian if the court finds that disclosure would result in imminent danger to the child or to the foster parent or treatment foster parent. After notifying the child's parent or guardian, the court shall hold a hearing prior to ordering the information withheld.

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1987 a. 27, 339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481; 1995 a. 27, 77, 201.

48.335 Dispositional hearings. (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be in need of protection or services under s. 48.13.

(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.

(3r) At hearings under this section, a parent of the child may present evidence relevant to the amount of child support to be paid by either or both parents.

(4) At hearing under this section, s. 48.357, 48.363 or 48.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audio-visual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

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

History: 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 W (2d) xiii (1987); 1993 a. 98, 481; 1995 a. 77.

Judicial Council Note, 1988: Sub. (4) allows the court to admit testimony on the record by telephone or live television at hearings on disposition, revision and extension of orders, or change of placement, on request of any party, unless good cause is shown. [Re Order effective Jan. 1, 1988]

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

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, the judge shall enter an order decid-

ing one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have exceptional educational needs in facilities which exclusively treat those categories of children. The dispositions under this section are as follows:

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

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

(2m) Place the child in the child's home under the supervision of an agency or the department, if the department approves, and order the agency or department to provide specified services to the child and the child's family, which may include but are not limited to individual, family or group counseling, homemaker or parent aide services, respite care, housing assistance, day care or parent skills training.

(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 or treatment 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 any of the following:

(a) A relative of the child.

(b) A county department.

(c) A licensed child welfare agency.

(6) (a) If the child is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the child's parent to provide the special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for the special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

(6m) If the report prepared under s. 48.33 (1) recommends that the child is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, the judge may order that an integrated service plan be developed and implemented.

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

(b) If the plan for independent living cannot be accomplished with the consent of the parent or guardian, the judge may transfer custody of the child as provided in sub. (4) (a) to (c).

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

(11) TRANSFER TO FOREIGN COUNTRIES UNDER TREATY. If a treaty is in effect between the United States and a foreign country, allowing a child adjudged delinquent who is a citizen or national of the foreign country to transfer to the foreign country, the governor may commence a transfer of the child if the child and the child's parent, guardian, legal custodian or the court request.

(12) EDUCATION PROGRAM. (a) Except as provided in par. (d), the judge may order the child to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the child resides.

2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a technical college district located in the school district in which the child resides.

(b) The judge shall order the school board to disclose the child's pupil records, as defined under s. 118.125 (1) (d), to the county department or licensed child welfare agency responsible for supervising the child, as necessary to determine the child's compliance with the order under par. (a).

(c) The judge shall order the county department or licensed child welfare agency responsible for supervising the child to disclose to the school board, technical college district board or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the child, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a child with exceptional educational needs, as defined under s. 115.76 (3).

(13) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the child is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child as to whether the child is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 (1) recommends that the child is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the child to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

(c) Payment for the court ordered treatment or education under this subsection in counties that have a pilot program under s. 48.547 shall be in accordance with s. 48.361.

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448.

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

(b) The disposition of a child, 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 except:

1. In sentencing proceedings after conviction of a felony or misdemeanor and then only for the purpose of a presentence study and report;

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

3. In a court of civil or criminal jurisdiction while it is exercising the jurisdiction of a family court and is considering the custody of children.

(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; 1979 c. 32, 300, 331, 359; 1985 a. 321; 1987 a. 222; 1995 a. 27, 77.

48.355 Dispositional orders. (1) INTENT. In any order under s. 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, consistent with the protection of the public. Whenever appropriate, and, in cases of child abuse and neglect, when it is consistent with the child's best interest in terms of physical safety and physical health 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. If there is no less drastic alternative than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible.

(2) CONTENT OF ORDER; COPY TO PARENT. (a) In addition to the order, the judge shall make written findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition ordered, including findings as to the child's condition and need for special treatment or care if an examination or assessment was conducted under s. 48.295. A finding may not include a finding that a child is in need of psychotropic medications.

(b) The court order shall be in writing and shall contain:

1. The specific services or continuum of services to be provided to the child and family, the identity of the agencies which are to be primarily responsible for the provision of the services mandated by the judge, the identity of the person or agency who will provide case management or coordination of services, if any, and, if custody is to be transferred to effect the treatment plan, the identity of the legal custodian.

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

2. If the child is placed outside the home, the name of the place or facility, including transitional placements, where the child shall

be cared for or treated, except that if the placement is a foster home or treatment foster home and the name and address of the foster parent or treatment foster parent is not available at the time of the order, the name and address of the foster parent or treatment foster parent shall be furnished to the court and the parent within 21 days of the order. If, after a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent or treatment foster parent would result in imminent danger to the child, the foster parent or the treatment foster parent, the judge may order the name and address of the prospective foster parents or treatment foster parents withheld from the parent or guardian.

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

4. If the child is placed outside the child's home, a designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county designee under s. 59.53 (5) for establishment of child support.

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

6. If the child is placed outside the home, the court's finding as to whether a county department which provides social services or the agency primarily responsible for the provision of services under a court order has made reasonable efforts to prevent the removal of the child from the home or, if applicable, that the agency primarily responsible for the provision of services under a court order has made reasonable efforts to make it possible for the child to return to his or her home.

7. A statement of the conditions with which the child is required to comply.

(c) If school attendance is a condition of an order under par. (b) 7., the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district in which the child is enrolled to notify the county department that is responsible for supervising the child within 5 days after any violation of the condition by the child.

(d) The court shall provide a copy of the dispositional order to the child's parent, guardian or trustee.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether a county department which provides social services or the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's welfare effectively in the home.

2. Financial assistance, if applicable, was provided to the family.

3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:

a. In-home support services, such as homemakers and parent aides.

b. In-home intensive treatment services.

c. Community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services.

d. Specialized services for family members with special needs.

4. Monitoring of client progress and client participation in services was provided.

5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, the court's consideration of reasonable efforts shall include, but not be limited to, the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

(2e) PERMANENCY PLANS; FILING; AMENDED ORDERS; COPIES.

(a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 48.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

(b) Each time a child's placement is changed under s. 48.357 or a dispositional order is revised under s. 48.363 or extended under s. 48.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

(c) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child's parent or guardian, to the child or the child's counsel or guardian ad litem and to the person representing the interests of the public.

(2m) TRANSITIONAL PLACEMENTS. The court order may include the name of transitional placements, but may not designate a specific time when transitions are to take place. The procedures of ss. 48.357 and 48.363 shall govern when such transitions take place. However, the court may place specific time limitations on interim arrangements made for the care of the child pending the availability of the dispositional placement.

(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. Except as provided under s. 48.368, all orders under this section shall terminate at the end of one year unless the judge specifies a shorter period of time. Except if s. 48.368 applies, 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.

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS AND OTHER ADULTS. In addition to any dispositional order entered under s. 48.345, the court may enter an order applicable to a child's parent, guardian or legal custodian or to another adult, as provided under s. 48.45.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275.

Mandatory time limits affect trial court's competency to act, but objection must be raised before trial court to avoid waiver. In Interest of LMC, 146 W (2d) 377, 430 NW (2d) 352 (Ct. App. 1988).

48.356 Duty of court to warn. (1) Whenever the court orders a child to be placed outside his or her home or denies a parent visitation because the child has been adjudged to be in need of protection or services under s. 48.345, 48.357, 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary

for the child to be returned to the home or for the parent to be granted visitation.

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

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

Substantial compliance is not adequate to meet (2) notice provision; oral, rather than written, notice is insufficient. In re D.F. 147 W (2d) 486, 433 NW (2d) 592 (Ct. App. 1988).

See note to 48.415 citing In Interest of K.K. 162 W (2d) 431, 469 NW (2d) 881 (Ct. App. 1991).

To comply with sub. (2), the written order needs to contain the same information as the oral notice under sub. (1); that the notice contained more does not mean sub. (2) was violated. In Interest of Jamie L. 172 W (2d) 218, 493 NW (2d) 56 (1992).

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

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

48.357 Change in placement. (1) The person or agency primarily responsible for implementing the dispositional order, the district attorney or the corporation counsel may request a change in the placement of the child, whether or not the change requested is authorized in the dispositional order and shall cause written notice to be sent to the child or the child's counsel or guardian ad litem, parent, foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), guardian and legal custodian. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. Any person receiving the notice under this subsection or notice of the specific foster or treatment 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 12 or more years of age, sign written waivers of objection, except that placement changes which were authorized in the dispositional order may be made immediately if notice is given as required in this subsection. In addition, a hearing is not required for placement changes authorized in the dispositional order except where an objection filed by a person who received notice alleges that new information is available which affects the advisability of the court's dispositional order. If a hearing is held under this subsection and the change in placement would remove a child from a foster home, treatment foster home or other placement with a physical custodian described in s. 48.62 (2), the court shall permit the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) to make a written or oral statement during the hearing or to submit a written statement prior to the hearing, relating to the child and the requested change in placement.

(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. Any party receiving notice may demand a hearing under sub. (1). In emergency situations, the child may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days, as well as in any placement authorized under s. 48.345 (3).

(2m) The child, the parent, guardian or legal custodian of the child or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may request a change in placement under this sub-

section. The request shall contain the name and address of the place of the new placement requested and shall state what new information is available which affects the advisability of the current placement. This request shall be submitted to the court. In addition, the court may propose a change in placement on its own motion. The court shall hold a hearing on the matter prior to ordering any change in placement under this subsection if the request states that new information is available which affects the advisability of the current placement, unless written waivers of objection to the proposed change in placement are signed by all parties entitled to receive notice under sub. (1) and the court approves. If a hearing is scheduled, the court shall notify the child, the parent, guardian and legal custodian of the child, any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child and all parties who are bound by the dispositional order at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be attached to the notice. If all the parties consent, the court may proceed immediately with the hearing. If a hearing is held under this subsection and the change in placement would remove a child from a foster home, treatment foster home or other placement with a physical custodian described in s. 48.62 (2), the court shall permit the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) to make a written or oral statement during the hearing or to submit a written statement prior to the hearing, relating to the child and the requested change in placement.

(4m) The department of corrections shall try to release a child to aftercare supervision under sub. (4) within 30 days after the date that department determines the child is eligible for the release.

NOTE: Sub. (4m) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). Sub. (4) was repealed by 1995 Wis. Act 77.

(5m) If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of industry, labor and job development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

(6) No change in placement may extend the expiration date of the original order.

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; s. 13.93 (2) (c).

See note to 48.64, citing Bingenheimer v. DHSS, 129 W (2d) 100, 383 NW (2d) 898 (1986).

48.36 Payment for services. (1) (a) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.345 or by a change in placement under s. 48.357, the duty of the parent or guardian or, in the case of a transfer of guardianship and custody under s. 48.839 (4), the duty of the former guardian to provide support shall continue even though the legal custodian or the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the child shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported to the department of industry, labor and job development, or the county child and spousal support agency, under s. 49.22 (2m). If the court has insufficient information with which to determine the amount of support, the court shall order the child's parent to furnish a statement of income, assets, debts and living expenses, if the parent has not already done so, to the court within 10 days after the court's order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(2) If 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.

History: 1977 c. 354; 1979 c. 221; 1981 c. 81; 1985 a. 29 s. 3202 (23); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446, 481; 1995 a. 27 ss. 2468, 9126 (19); 1995 a. 77, 404.

48.361 Payment for alcohol and other drug abuse services. (1) In this section, "alcohol and other drug abuse services" means all of the following:

(a) Any alcohol or other drug abuse examination or assessment ordered by a court under s. 48.295 (1).

(b) Any special treatment or care that relates to alcohol or other drug abuse services ordered by a court under s. 48.345 (6) (a).

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

(2) (a) 1. If a child's parent neglects, refuses or is unable to provide court-ordered alcohol and other drug abuse services for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered alcohol and drug abuse services. If the parent consents to provide court-ordered alcohol and other drug abuse services for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered alcohol and other drug abuse services the court may order the health insurance provider or 3rd-party payer to pay for the court-ordered alcohol and other drug abuse services in accordance with the terms of the parent's health insurance policy or other 3rd-party payment plan.

2. This paragraph applies to payment for alcohol and other drug abuse services in any county, regardless of whether the county is a pilot county under s. 48.547.

(am) 1. If a court in a county that has a pilot program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with par. (b).

2. If a court in a county that does not have a pilot program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with s. 48.345 (6) (a) or 48.36.

(b) 1. In counties that have a pilot program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the child's county of legal residence to pay for the court-ordered alcohol and other drug abuse services whether or not custody has been taken from the parent.

2. If a judge orders a county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services

under this paragraph, the provision of the alcohol and other drug abuse services shall be subject to conditions specified in ch. 51.

(c) Payment for alcohol and other drug abuse services by a county department under this section does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of alcohol and other drug abuse services. Payment by the county under this section does not prevent recovery of reasonable contribution toward the costs of the court-ordered alcohol and other drug abuse services from the parent which is based upon the ability of the parent to pay. This subsection is subject to s. 46.03 (18).

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

48.362 Payment for certain special treatment or care services. (1) In this section, "special treatment or care" has the meaning given in s. 48.02 (17m), except that it does not include alcohol and other drug abuse services.

(2) This section applies to the payment of court-ordered special treatment or care under s. 48.345 (6) (a), whether or not custody has been taken from the parent.

(3) If a child's parent neglects, refuses or is unable to provide court-ordered special treatment or care for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered special treatment or care. If the parent consents to provide court-ordered special treatment or care for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the parent's health insurance policy or other 3rd-party payment plan.

(4) (a) If the judge finds that payment is not attainable under sub. (3), the judge may order the county department under s. 51.42 or 51.437 of the child's county of legal residence to pay the cost of any court-ordered special treatment or care that is provided by or under contract with that county department.

(b) Payment for special treatment or care by a county department under par. (a) does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of special treatment or care.

(c) A county department that pays for court-ordered special treatment or care under par. (a) may recover from the parent, based on the parent's ability to pay, a reasonable contribution toward the costs of court-ordered special treatment or care. This paragraph is subject to s. 46.03 (18).

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

48.363 Revision of dispositional orders. (1) A child, the child's parent, guardian or legal custodian, any person or agency bound by a dispositional order or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent, or the court may on its own motion propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter if the request or court proposal indicates that new information is available which affects the advisability of the court's dispositional order and prior to any revision of the dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves. If a hearing is held, the court shall notify the child, the child's parent, guardian and legal custodian, all parties bound by the dispositional order, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), and the district attorney or cor-

poration counsel in the county in which the dispositional order was entered at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If the proposed revision is for a change in the amount of child support to be paid by a parent, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court and the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of industry, labor and job development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

(1m) If a hearing is held under sub. (1), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall permit a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

(2) If the court revises a dispositional order under sub. (1) with respect to the amount of child support to be paid by a parent for the care and maintenance of the parent's minor child who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

History: 1977 c. 354; 1979 c. 300; 1985 a. 172; 1993 a. 481; 1995 a. 275, 404.

48.365 Extension of orders. (1) In this section, "2 or more years" means a period of time that begins with the first placement of the child outside of his or her home pursuant to an order under this section or s. 48.345, 48.357 or 48.363 and includes any period of time in which the child returned home, unless the periods of time at home account for the majority of the time since the first placement.

(1m) The parent, child, guardian, legal custodian, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered or the court on its own motion, may request an extension of an order under s. 48.355. The request shall be submitted to the court which entered the order. No order under s. 48.355 may be extended except as provided in this section.

(2) No order may be extended without a hearing. The court shall notify the child or the child's guardian ad litem or counsel, the child's parent, guardian, legal custodian, all the parties present at the original hearing, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing.

(2g) (a) At the hearing the person or agency primarily responsible for providing services to the child shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation or care and treatment. The juvenile offender review program may file a written report regarding any child examined by the program.

(b) If the child is placed outside of his or her home, the report shall include all of the following:

1. A copy of the report of the review panel under s. 48.38 (5), if any, and a response to the report from the agency primarily responsible for providing services to the child.

2. An evaluation of the child's adjustment to the placement and of any progress the child has made, suggestions for amend-

ment of the permanency plan, a description of efforts to return the child to his or her home, including efforts of the parents to remedy factors which contributed to the child's placement and, if continued placement outside of the child's home is recommended, an explanation of why returning the child to his or her home is not feasible.

3. If the child has been placed outside of his or her home for 2 or more years, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the child. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the child and whether or not the child should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the child be registered with the adoption information exchange or report the reason why registering the child is contrary to the best interest of the child.

(c) In cases where the child has not been placed outside the home, the report shall contain a description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation, an explanation of why these efforts have not yet succeeded in meeting the objective, and anticipated future planning for the child.

(2m) (a) Any party may present evidence relevant to the issue of extension. The judge shall make findings of fact and conclusions of law based on the evidence, including a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home. An order shall be issued under s. 48.355.

(ag) In addition to any evidence presented under par. (a), the court shall permit a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

(b) If a child has been placed outside the home under s. 48.345 and an extension is ordered under this subsection, the judge shall state in the record the reason for the extension.

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

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

(5) Except as provided in s. 48.368, all orders shall be for a specified length of time not to exceed one year.

(6) If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances specified in s. 48.315 (1).

(7) Nothing in this section may be construed to allow any changes in placement. Revocation and other changes in placement may take place only under s. 48.357.

History: 1977 c. 354; 1979 c. 300; 1983 a. 351, 399, 538; 1985 a. 172; 1987 a. 383; 1989 a. 31, 86, 107, 359; 1993 a. 16, 98, 377, 446; 1995 a. 27, 77, 275.

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

Extension under (6) does not deprive juvenile of liberty without due process. In Interest of S.D.R. 109 W (2d) 567, 326 NW (2d) 762 (1982).

See note to 48.355, citing In Interest of L.M.C. 146 W (2d) 377, 430 NW (2d) 352 (Ct. App. 1988).

See note to 48.335, citing *In Interest of T.M.S.* 152 W (2d) 345, 448 NW (2d) 282 (Ct. App. 1989).

Court may extend dispositional order for 30 days under (6) to consider petition to extend original order even when juvenile turns eighteen during extension period. *In Interest of W.P.* 153 W (2d) 50, 449 NW (2d) 615 (1990).

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

48.366 Extended court jurisdiction. (1) APPLICABILITY.

(a) Subject to par. (c), if the person committed any crime specified under s. 940.01, 940.02, 940.05, 940.21 or 940.225 (1) (a) to (c), 948.03 or 948.04, is adjudged delinquent on that basis and is placed in a secured correctional facility under s. 48.34 (4m) [1993 stats.], the court shall enter an order extending its jurisdiction as follows:

NOTE: Section 48.34 (4m) was repealed by 1995 Wis. Act 77.

1. If the act for which the person was adjudged delinquent was a violation of s. 940.01, the order shall remain in effect until the person reaches 25 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

2. If the act for which the person was adjudged delinquent was any other violation specified in this paragraph, the order shall remain in effect until the person reaches 21 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

(b) Subject to par. (c), if the person committed a crime specified in s. 940.20 (1) or 946.43 while placed in a secured correctional facility and is adjudged delinquent on that basis following transfer of jurisdiction under s. 970.032, the court shall enter an order extending its jurisdiction until the person reaches 21 years of age or until termination of the order under sub. (6), whichever occurs earlier.

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

(5) REVISION OF ORDER. (a) Any of the following may petition the court for a revision of an order:

1. The person subject to the order.

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

(b) The department of corrections or county department may, at any time, file a petition proposing either release of a person subject to an order to aftercare supervision or revocation of the person's aftercare supervision. The petition shall set forth in detail:

1. The proposed treatment and supervision plan and proposed institutional placement, if any.

2. Any available information that is relevant to the advisability of revising the order.

(c) The person subject to an order may, no more often than once each year, file a petition proposing his or her release to aftercare supervision. The petition shall set forth in detail:

1. The proposed conditions of aftercare supervision.

2. Any available information that is relevant to the advisability of revising the order.

(d) 1. At the time the department of corrections or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the petition. The notice to the person who is the subject of the petition shall state that the person has a right to request a hearing on the petition and, if the petition is for revocation of a person's aftercare supervision, that the person has the right to counsel. The department of corrections or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the child was adjudged delinquent and the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), the person shall provide written notice of the petition to the department of corrections or county department, as applicable.

(e) In making a determination under this subsection, the court shall balance the needs of the person with the protection of the public.

(f) If the court grants a petition to release a person to aftercare supervision and the person's county of residence is one in which the county department provides aftercare supervision, the department of corrections may contract with the county department under s. 301.08 (2) for aftercare supervision of the person.

(g) Sections 48.357 and 48.363 do not apply to orders under this subsection.

(6) PETITION FOR DISCHARGE; HEARINGS. (a) Any of the following may petition the court that entered an order to terminate the order and to discharge the person subject to the order from supervision:

1. The person subject to the order.

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

(b) The petition shall state the factual basis for the petitioner's belief that discharge will not pose a threat of bodily harm to other persons. The department of corrections or county department may file a petition at any time. The person subject to the order may file a petition not more often than once a year.

(c) 1. At the time the department of corrections or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the petition. The notice to the person who is the subject of the petition shall state that the person has the right to counsel. The department of corrections or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the person was adjudged delinquent and to the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), he or she shall provide written notice of the petition to the department of corrections or county department, whichever has been ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(d) If the court denies the petition, the person shall remain under the jurisdiction of the court until the expiration of the order or until a subsequent petition for discharge under this subsection is granted, whichever is sooner.

(7) NOTICE OF HEARING. Upon receipt of a request for a hearing under sub. (5) or upon receipt of a petition under sub. (6), the court shall set a date for a hearing on the matter. In any of those cases, the court shall notify the department of corrections and each person specified in sub. (5) (d) 1. or (6) (c) 1. of the hearing at least 7 days before the hearing, except that if any such person lives outside of this state, the notice shall be mailed at least 14 days before the hearing.

(8) TRANSFER TO OR BETWEEN FACILITIES. The department of corrections may transfer a person subject to an order between secured correctional facilities. After the person attains the age of 17 years, the department of corrections may place the person in a state prison named in s. 302.01. If the department of corrections places a person subject to an order under this section in a state prison, that department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a).

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

48.368 Continuation of dispositional orders. (1) If a petition for termination of parental rights is filed under s. 48.41 or

48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed during the year in which a dispositional order under s. 48.355 or an extension order under s. 48.365 is in effect, the dispositional or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

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

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

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

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

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

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

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

(2) Notwithstanding sub. (1), no costs, penalty assessments or jail assessments may be assessed against any child in a circuit court exercising jurisdiction under s. 48.16.

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

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

(a) Results of a test or a series of tests of the child to determine the presence of HIV, as defined in s. 968.38 (1) (b), antigen or non-antigenic products of HIV, or an antibody to HIV, as provided under s. 252.15 (5) (a) 19., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster parent, treatment foster parent or operator of the group home or child caring institution of the confidentiality requirements under s. 252.15 (6).

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

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

nency plan relating to any mental, emotional, cognitive, developmental or behavioral disability of the child. The foster parent, treatment foster parent or operator of a group home or child caring institution receiving information under this subsection shall keep the information confidential.

History: 1993 a. 395; 1995 a. 275.

NOTE: 1993 Wis. Act 395, which created this section, contains extensive explanatory notes.

48.373 Medical authorization. (1) The court assigned to exercise jurisdiction under this chapter and ch. 938 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 938 determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 and consents.

(2) Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

(3) In a proceeding under s. 48.375 (7), a circuit court exercising jurisdiction under s. 48.16 may not authorize any medical services other than the performance or inducement of an abortion.

History: 1971 c. 105; 1977 c. 354 s. 64; 1977 c. 449; Stats. 1977 s. 48.373; 1991 a. 263; 1993 a. 32; 1995 a. 77.

48.375 Parental consent required prior to abortion; judicial waiver procedure. (1) **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that:

1. Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

2. The medical, emotional and psychological consequences of abortion and of childbirth are serious and can be lasting, particularly when the patient is immature.

3. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related.

4. Parents ordinarily possess information essential to a physician's exercise of the physician's best medical judgment concerning a minor.

5. Parents who are aware that their minor is pregnant or has had an abortion may better ensure that she receives adequate medical attention during her pregnancy or after her abortion.

6. Parental knowledge of a minor's pregnancy and parental consent to an abortion are usually desirable and in the best interest of the minor.

(b) It is the intent of the legislature in enacting this section to further the purposes set forth in s. 48.01, and in particular to further the important and compelling state interests in:

1. Protecting minors against their own immaturity.

2. Fostering the family structure and preserving it as a viable social unit.

3. Protecting the rights of parents to rear minors who are members of their households.

(2) **DEFINITIONS.** In this section:

(a) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a minor after implantation of a fertilized human ovum and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) "Adult family member" means any of the following who is at least 25 years of age:

1. Grandparent.

2. Aunt.

3. Uncle.

4. Sister.

5. Brother.

(c) "Counselor" means a physician including a physician specializing in psychiatry, a licensed psychologist, as defined in s.

455.01 (4), or an ordained member of the clergy. “Counselor” does not include any person who is employed by or otherwise affiliated with a reproductive health care facility, a family planning clinic or a family planning agency; any person affiliated with the performance of abortions, except abortions performed to save the life of the mother; or any person who may profit from giving advice to seek an abortion.

(d) Notwithstanding s. 48.02 (2m), “court” means any circuit court within this state.

(e) “Emancipated minor” means a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority.

(em) “Member of the clergy” has the meaning given in s. 765.002 (1).

(g) “Physician” means a person licensed to practice medicine and surgery under ch. 448.

(h) “Referring physician” means a physician who refers a minor to another physician for the purpose of obtaining an abortion.

(3) APPLICABILITY. This section applies whether or not the minor who initiates the proceeding is a resident of this state.

(4) PARENTAL CONSENT REQUIRED. (a) Except as provided in this section, no person may perform or induce an abortion on or for a minor who is not an emancipated minor unless the person is a physician and one of the following applies:

1. The person or the person’s agent has, either directly or through a referring physician or his or her agent, received and made part of the minor’s medical record, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed written consent of one of her parents; or of the minor’s guardian or legal custodian, if one has been appointed; or of an adult family member of the minor; or of one of the minor’s foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor’s parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor.

2. The court has granted a petition under sub. (7).

(b) Paragraph (a) does not apply if the person who intends to perform or induce the abortion is a physician and any of the following occurs:

1. The person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion.

1g. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record and report the sexual intercourse as required under s. 48.981 (2) or (2m) (e). Any minor who makes a false statement under this subdivision, which the minor does not believe is true, is subject to a proceeding under s. 938.12 or 938.13 (12), whichever is applicable, based on a violation of s. 946.32 (2).

1m. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor’s foster parents or treatment foster par-

ents, if the minor has been placed in a foster home or treatment foster home and the minor’s parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, for consent.

2. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that the pregnancy is the result of sexual intercourse with a caregiver specified in s. 48.981 (1) (am) 1., 2., 3., 4. or 8. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record. The person who intends to perform or induce the abortion shall report the sexual intercourse as required under s. 48.981 (2m) (d) 1.

3. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor, or the minor’s guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or a foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor’s parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, has inflicted abuse on the minor. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record. The person who intends to perform or induce the abortion shall report the abuse as required under s. 48.981 (2).

(5) COUNSELING. Any minor who is pregnant and who is seeking an abortion and any minor who has had an abortion may receive counseling from a counselor of her choice. A county department may refer the minor to a private counselor.

(6) RIGHT TO PETITION COURT FOR WAIVER. Any pregnant minor who is seeking an abortion in this state, and any member of the clergy on the minor’s behalf, may file a petition specified under s. 48.257 with any court for a waiver of the parental consent requirement under sub. (4) (a) 1.

(7) COURT PROCEDURE. (a) *Receipt of petition; initial appearance.* On the date that a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next calendar day, the court shall hold an initial appearance in chambers at which the minor or the member of the clergy who filed the petition on behalf of the minor, if any, is present and shall do all of the following:

1. Appoint legal counsel under s. 48.23 (1) (cm) for the minor if the minor is not represented by counsel.

3. Set a time for a hearing on the petition that will enable the court to comply with the time limit specified in par. (d) 1.

4. Notify the minor, the minor’s counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and the minor’s guardian ad litem, if any, of the time, date and place of the hearing.

(am) *Guardian ad litem; appointment.* At the initial appearance under par. (a), the court may also, in its discretion, appoint a guardian ad litem under s. 48.235 (1) (d).

(b) *Hearing; evidence.* The court shall hold a confidential hearing on a petition that is filed by a minor. The hearing shall be held in chambers, unless a public fact-finding hearing is demanded by the minor through her counsel. At the hearing, the court shall consider the report of the guardian ad litem, if any, and hear evidence relating to all of the following:

1. The emotional development, maturity, intellect and understanding of the minor.

2. The understanding of the minor about the nature of, possible consequences of and alternatives to the intended abortion procedure.

3. Any other evidence that the court may find useful in making the determination under par. (c).

(bm) *Member of the clergy’s affidavit.* If a member of the clergy files a petition under s. 48.257 on behalf of a minor, the member of the clergy shall file with the petition an affidavit stating

that the member of the clergy has met personally with the minor and has explored with the minor the alternative choices available to the minor for managing the pregnancy, including carrying the pregnancy to term and keeping the infant, carrying the pregnancy to term and placing the infant with a relative or with another family for adoption or having an abortion, and has discussed with the minor the possibility of involving one of the persons specified in sub. (4) (a) 1. in the minor's decision making concerning the pregnancy and whether or not in the opinion of the minor that involvement would be in the minor's best interests. The court may make the determination under par. (c) on the basis of the ordained member of the clergy's affidavit or may, in its discretion, require the minor to attend an interview with the court in chambers before making that determination. Any information supplied by a minor to a member of the clergy in preparation of the petition under s. 48.257 or the affidavit under this paragraph shall be kept confidential and may only be disclosed to the court in connection with a proceeding under this subsection.

(c) *Determination.* The court shall grant the petition if the court finds that any of the following standards applies:

1. That the minor is mature and well-informed enough to make the abortion decision on her own.

2. That the performance or inducement of the abortion is in the minor's best interests.

(d) *Time limit.* 1. The court shall make the determination under par. (c) and issue an order within 3 calendar days after the initial appearance unless the minor and her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of the time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a certified copy of the court's order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a copy of the court's order denying the petition and shall also notify the minor by her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, that she has a right to initiate an appeal under s. 809.105.

1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to comply with the time limits specified under subd. 1. without the prior consent of the minor and the minor's counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, the minor and the minor's counsel, if any, or the member of the clergy, if any, shall select a temporary reserve judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order granting or denying the petition and the chief judge of the judicial administrative district in which the court is located shall assign the temporary reserve judge selected by the minor and the minor's counsel, if any, or the member of the clergy, if any, to make the determination and issue the order. A temporary reserve judge assigned under this subdivision to make a determination under par. (c) and issue an order granting or denying a petition shall make the determination and issue the order within 2 calendar days after the assignment, unless the minor and her counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of that time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition, and shall notify the minor of the court's order, as provided under subd. 1.

2. Counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall immediately, upon notification under subd. 1. or 1m. that the court has granted

or denied the petition, notify the minor. If the court has granted the petition, counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the court order to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this subdivision shall place the copy in the minor's medical record.

(e) *Confidentiality.* The identity of a minor who files or for whom is filed a petition under s. 48.257 and all records and other papers relating to a proceeding under this subsection shall be kept confidential except for use in a forfeiture action under s. 895.037 (2), a civil action filed under s. 895.037 (3) or a child abuse or neglect investigation under s. 48.981.

(f) *Certain persons barred from proceedings.* No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, of any minor who is seeking a court determination under this subsection may attend, intervene or give evidence in any proceeding under this subsection.

(8) **APPEAL.** An appeal by a minor from an order of the trial court denying a petition under sub. (7) may be taken to the court of appeals as a matter of right under s. 808.03 (1) and is governed by s. 809.105.

History: 1991 a. 263, 315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309.

Essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. *Planned Parenthood v. Casey*, 505 US 833, 120 LEd 2d 674 (1992).

SUBCHAPTER VII

PERMANENCY PLANNING; RECORDS

48.38 Permanency planning. (1) DEFINITIONS. In this section:

(a) "Agency" means the department, a county department or a licensed child welfare agency.

(am) "Independent agency" means a private, nonprofit organization, but does not include a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(b) "Permanency plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(2) **PERMANENCY PLAN REQUIRED.** Except as provided in sub. (3), for each child living in a foster home, treatment foster home, group home, child-caring institution, secure detention facility or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for

providing services to the child under s. 48.355 shall prepare a written permanency plan, if one of the following conditions exists:

(a) The child is being held in physical custody under s. 48.207, 48.208 or 48.209.

(b) The child is in the legal custody of the agency.

(c) The child is under supervision of an agency under s. 48.64 (2) or pursuant to a court order under s. 48.355.

(d) The child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63 (1).

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

(f) The child's care is paid under s. 49.19.

(3) **TIME.** The agency shall file the permanency plan with the court within 60 days after the date on which the child was first held in physical custody or placed outside of his or her home under a court order, except that if the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.

(4) **CONTENTS OF PLAN.** The permanency plan shall include a description of all of the following:

(a) The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, and to make it possible for the child to return home.

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

(bm) The availability of a placement with a relative of the child and, if a decision is made not to place the child with an available relative, why placement with the relative is not appropriate.

(c) The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate.

(e) The appropriateness of the placement and of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not appropriate.

(f) The services that will be provided to the child, the child's family and the child's foster parent, the child's treatment foster parent or the operator of the facility where the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote stability in the placement.

2. Meet the child's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

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

(5) **PLAN REVIEW.** (a) The court or a panel appointed under this paragraph shall review the permanency plan every 6 months from the date on which the child was first held in physical custody or placed outside of his or her home. If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the

child or the parents of the child whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency.

(b) The court or the agency shall notify the parents of the child, the child if he or she is 12 years of age or older and the child's foster parent, the child's treatment foster parent or the operator of the facility in which the child is living of the date, time and place of the review, of the issues to be determined as part of the review, of the fact that they may submit written comments not less than 10 working days before the review and of the fact that they may participate in the review. The court or agency shall notify the person representing the interests of the public, the child's counsel and the child's guardian ad litem of the date of the review, of the issues to be determined as part of the review and of the fact that they may submit written comments not less than 10 working days before the review. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child's case record.

(c) The court or the panel shall determine each of the following:

1. The continuing necessity for and the appropriateness of the placement.

2. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child and the child's guardian, if any.

3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents.

4. The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child to his or her home or obtaining a permanent placement for the child.

5. The date by which it is likely that the child will be returned to his or her home, placed for adoption, placed under legal guardianship or otherwise permanently placed.

6. If the child has been placed outside of his or her home for 2 years or more, the appropriateness of the permanency plan and the circumstances which prevent the child from:

a. Being returned to his or her home;

am. Being placed in the home of a relative of the child.

b. Having a petition for the involuntary termination of parental rights filed on behalf of the child;

c. Being placed for adoption; or

d. Being placed in sustaining care.

7. Whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home.

(d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the person representing the interests of the public, the child's counsel and the child's guardian ad litem a copy of the permanency plan and any written comments submitted under par. (b). Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the child's counsel and the child's guardian ad litem may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order, the child or the child's counsel or guardian ad litem, the person representing the interests of the pub-

lic, the child's parent or guardian and the child's foster parent, the child's treatment foster parent or the operator of the facility where the child is living.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(6) RULES. The department of health and family services shall promulgate rules establishing the following:

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of children outside of their homes and to make it possible for children to return to their homes if they have been placed outside of their homes.

(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of children.

History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491; 1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275.

NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 W (2d) 222, 499 NW (2d) 219 (Ct. App. 1993).

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of children shall not be open to inspection or their contents disclosed except under sub. (1b) or (1d) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction.

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

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

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under this section or s. 48.375 (7) (e).

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

(am) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), the court shall open for inspection by the person named in the permission any records specifically identified by

the parent, guardian, legal custodian or child in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) Upon request of the department or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department or federal agency.

(dm) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.458 (1) [59.53 (6) (a)] or a party to a paternity proceeding under ss. 767.45 to 767.60, the party's attorney or the guardian ad litem for the child who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child for the purpose of determining the paternity of the child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41, the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by the requester its records relating to the paternity of the child or disclose to the requester those records.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

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

NOTE: Par. (f) is created eff. 6–1–97 by 1995 Wis. Act 440.

(5) (a) Any person who is denied access to a record under sub. (1), (1b) or (1d) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.
2. The reason the information is being sought.
3. The basis for the petitioner's belief that the information is contained in the records.
4. The relevance of the information sought to the petitioner's reason for seeking the information.
5. The petitioner's efforts to obtain the information from other sources.

(b) The court shall notify the child, the child's counsel, the child's parents and appropriate law enforcement agencies in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(c) The court shall make an inspection, which may be in camera, of the child's records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this determination, the court shall balance the petitioner's interest in obtaining access to the record against the child's interest in avoiding the stigma that might result from disclosure.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the child's records. All records related to a decision under this subsection are confidential.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987

a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448.

Discovery of juvenile police and court records discussed. State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 W (2d) 435, 267 NW (2d) 309 (1978).

See note to 967.06, citing State ex rel. S. M. O. 110 W (2d) 447, 329 NW (2d) 275 (Ct. App. 1982).

Juvenile officers are not required to provide information concerning juvenile to school officials. School does not violate (1) by using information obtained from officer to take disciplinary action against student as long as school does not reveal reason for action. 69 Atty. Gen. 179.

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

SUBCHAPTER VIII

TERMINATION OF PARENTAL RIGHTS

48.40 Definitions. In this subchapter:

(1) Except as otherwise provided, "agency" means the department, a county department or a licensed child welfare agency.

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

(2) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

History: 1979 c. 330; 1985 a. 176; 1995 a. 289.

Parents whose rights have been terminated do not inherit from a child; 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.

Terminating parental rights. Hayes and Ogorchok. Wis. Law. June 1989.

48.41 Voluntary consent to termination of parental rights. (1) The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standard and factors specified in s. 48.426.

(2) The court may accept a voluntary consent to termination of parental rights only as follows:

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary; or

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before an embassy or consul official, a military judge or a judge of any court of record in another county or state or a foreign jurisdiction. This written consent shall be accompanied by the signed findings of the embassy or consul official or judge who accepted the parent's consent. These findings shall recite that the embassy or consul official or judge or an attorney who represents any of the parties questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

(c) A person who may be, but who has not been adjudicated as, the father of a nonmarital child may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(d) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, or in which the child's birth parent is a resident of a for-

eign jurisdiction, the child's birth parent may consent to the termination of any parental rights that he or she may have as provided in par. (a) or (b) or by filing with the court an affidavit witnessed by 2 persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims all rights to the child, including the right to notice of proceedings under this subchapter.

(3) If in any proceeding to terminate parental rights voluntarily a guardian ad litem has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the court. The court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If the court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights under s. 48.415.

History: 1979 c. 330; 1981 c. 384; 1983 a. 352, 447; 1987 a. 383; Sup. Ct. Order, 151 W (2d) xxv (1989).

Judicial Council Note, 1990: Sub. (3) is repealed and recreated because the so-called substituted judgment permitted therein is bad public policy. New sub. (3) deals with the situation in which there is reason to doubt the competency of a parent who wishes to consent to the termination of his or her parental rights. Any party or guardian ad litem with reason to doubt such competency is required to so inform the court. The court must then make an inquiry in whatever way is appropriate. This may mean a simple discussion with the person, an examination, the appointment of experts to examine the person, a hearing or whatever seems proper in the discretion of the court. If the court finds the person incapable of making an informed and voluntary termination of parental rights, the court must dismiss the proceeding. If appropriate, an involuntary proceeding may then be commenced. A finding that the parent is competent does not obviate the need for a record that he or she has in fact given informed and voluntary consent prior to entry of a termination order. In Interest of D.L.S., 112 Wis. 2d 180, 196–97 (1983). [Re Order effective Jan. 1, 1990]

Circuit court record did not support finding that minor parent's consent was voluntary and informed. Minimum information which must be determined on the record set forth. In Interest of D. L. S. 112 W (2d) 180, 332 NW (2d) 293 (1983).

48.415 Grounds for involuntary termination of parental rights. At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving that:

1. The child has been left without provision for its care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent;

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

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer; or

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2. or 3. The time periods under par. (a) 2. or 3. shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) Abandonment is not established under par. (a) 2. or 3. if the parent proves all of the following by a preponderance of the evidence:

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

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

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

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

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

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

(a) That the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

(b) 1. In this paragraph, "diligent effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

2. That the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the court.

(c) That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders; and that the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or developmental disability as defined in s. 55.01 (2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR VISITATION. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the

court has not subsequently modified its order so as to permit periods of physical placement or visitation.

(5) CHILD ABUSE. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

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

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

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

(7) INCESTUOUS PARENTHOOD. Incestuous parenthood, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(8) INTENTIONAL OR RECKLESS HOMICIDE OF PARENT. Intentional or reckless homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide as evidenced by a final judgment of conviction.

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

NOTE: The first bracketed "final" was incorrectly inserted by 1995 Wis. Act 275. The second bracketed "final" is shown in the correct location. Corrective legislation is pending.

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

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

whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, “serious felony” means any felony under s. 940.01, 940.02, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 or under s. 948.21 if death is a consequence or a crime under federal law or the law of any other state that is comparable to a crime specified in this paragraph.

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

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

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

NOTE: Section 48.415 (intro.) and (1) to (8), as renumbered under s. 13.93 (1) (b), are shown as affected by 2 acts of the 1995 legislature and as merged under s. 13.93 (2) (c). Subsection (1) (title) as created by 1995 Wis. Act 225 is rendered surplusage by the renumbering.

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 6; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; s. 13.93 (1) (b), (2) (c).

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.

Termination order under s. 48.40 (2), 1975 stats., was not supported by sufficient findings where findings merely repeated statutory language and made no determination of best interests of child. *Termination of Parental Rights to T. R. M.* 100 W (2d) 681, 303 NW (2d) 581 (1981).

Parent had constitutionally protected rights to care, custody and management of child. *In Interest of J. L. W.* 102 W (2d) 118, 306 NW (2d) 46 (1981).

Statutory provisions under which court may terminate all rights of parents to minor were not, as applied to parent convicted of second-degree murder, void for vagueness. *Termination of Parental Rights to A. M. K.* 105 W (2d) 91, 312 NW (2d) 840 (Ct. App. 1981).

Sub. (6) (a) 2 does not unconstitutionally discriminate against fathers. Mere fact that unwed father was jailed since 5th month of pregnancy did not preclude termination of parental rights. *In Interest of Baby Girl K.* 113 W (2d) 429, 335 NW (2d) 846 (1983).

Dismissal of termination proceedings on grounds of abandonment because only 2 of 6 dispositional orders contained statutory warnings overturned. Warning is only required on one order. *In Interest of K.K.* 162 W (2d) 431, 469 NW (2d) 881 (Ct. App. 1991).

One-year abandonment period under (1) (a) 3 need not immediately precede filing of the petition; where abandonment is found termination is still discretionary. *In Interest of T.P.S.* 168 W (2d) 259, 483 NW (2d) 591 (Ct. App. 1992).

While CHIPS judge must notify the parents of possible termination grounds in the written dispositional order and repeat that information orally to any parent present in court, proof that such oral notice was given is not required in later termination proceedings under sub. (2) (a). *In Interest of D.P.* 170 W (2d) 313, 488 NW (2d) 133 (Ct. App. 1992).

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

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

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

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

Termination under sub. (8) due to a murder occurring prior to the adoption of sub. (8) did not violate the prohibition against *ex post facto* laws and did not violate due process, equal protection or double jeopardy protections. *Winnabago County DSS v. Darrell A.* 194 W (2d) 628, 534 NW (2d) 907 (Ct. App. 1995).

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

Sub. (5) does not require an assessment of present and future behavior. The statute refers to past behavior which was a threat to the child’s welfare. *Jerry M. v. Dennis L. M.* 198 W (2d) 10, 542 NW (2d) 162 (Ct. App. 1995).

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

Process is constitutionally due natural parent at state-initiated parental rights termination proceeding; three-factor test discussed. *Santosky v. Kramer*, 455 US 745 (1982).

Unwed father who failed to register with New York putative father registry had no constitutional right to notice of adoption proceedings. *Lehr v. Robertson*, 463 US 248 (1983).

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

48.42 Procedure. (1) PETITION. A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child’s parent, an agency or a person authorized to file a petition under s. 48.25 or 48.835. The petition shall be entitled “In the interest of (child’s name), a person under the age of 18” and shall set forth with specificity:

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

(b) The names and addresses of the child’s parent or parents, guardian and legal custodian;

(c) 1. A statement that consent will be given to termination of parental rights as provided in s. 48.41; or

2. A statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

(d) A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(1m) VISITATION OR CONTACT RIGHTS. (a) If the petition filed under sub. (1) includes a statement of the grounds for involuntary termination of parental rights under sub. (1) (c) 2., the petitioner may, at the time the petition under sub. (1) is filed, also petition the court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition under sub. (1). Any petition under this paragraph shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

(b) The court may issue the temporary order *ex parte* or may refuse to issue the temporary order and hold a hearing on whether to issue an injunction. The temporary order is in effect until a hearing is held on the issuance of an injunction. The court shall hold a hearing on the issuance of an injunction on or before the date of the hearing on the petition to terminate parental rights under s. 48.422 (1).

(c) Notwithstanding any other order under s. 48.355 (3), the court may grant an injunction prohibiting the respondent from visiting or contacting the child if the court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the court dismisses the petition for termination of parental rights under s. 48.427 (2) or issues an order terminating parental rights under s. 48.427 (3).

(2) WHO MUST BE SUMMONED. Except as provided in sub. (2m), the petitioner shall cause the summons and petition to be served upon the following persons:

(a) The parent or parents of the child, unless the child’s parent has waived the right to notice under s. 48.41 (2) (d).

(b) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established:

1. A person who has filed a declaration of interest under s. 48.025.

2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child

unless that person has waived the right to notice under s. 48.41 (2) (c).

3. A person who has lived in a familial relationship with the child and who may be the father of the child.

(c) The guardian, guardian ad litem and legal custodian of the child.

(d) Any other person to whom notice is required to be given by ch. 822, excluding foster parents and treatment foster parents.

(e) To the child if the child is 12 years of age or older.

(2m) NOTICE NOT REQUIRED. Except as provided in this subsection, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this subsection has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this subsection for conduct which may have led to the child's conception. A person who under this subsection is not given notice does not have standing to appear and contest a petition for the termination of his parental rights. This subsection does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

(3) CONTENTS OF SUMMONS. The summons shall:

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

(b) Advise the party, if applicable, of his or her right to legal counsel, regardless of ability to pay under s. 48.23 and ch. 977.

(c) Advise the parties of the possible result of the hearing and the consequences of failure to appear or respond.

(d) Advise the parties that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after the judgment is entered for the right to pursue such relief to be preserved.

(4) MANNER OF SERVING SUMMONS AND PETITION. (a) *Personal service.* A copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 7 days before the date of the hearing, except that service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

(b) *Constructive notice.* 1. If with reasonable diligence a party specified in sub. (2) cannot be served under par. (a), service shall be made by publication of the notice under subd. 4.

2. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been adjudicated, the court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd. 4.

3. At the time the petition is filed, the petitioner may move the court for an order waiving the requirement of constructive notice to a person who, although his identity is unknown, may be the father of a nonmarital child.

4. A notice published under this subsection shall be published as a class I notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner or court shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party. If the party's post-office address is known or can, with due diligence, be ascertained, a copy of the summons and petition shall be mailed to the party upon or immediately prior to the first publication. The mailing may be omitted if the petitioner shows that the post-office address cannot be obtained with due diligence. Except as provided in subd. 5., the notice shall include the date, place and circuit court branch for the hearing, the court file number, the name, address and telephone number of the petitioner's attorney and information the court

determines to be necessary to give effective notice to the party or parties. Such information shall include the following, if known:

a. The name of the party or parties to whom notice is being given;

b. A description of the party or parties;

c. The former address of the party or parties;

d. The approximate date and place of conception of the child; and

e. The date and place of birth of the child.

5. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the child unless the court finds that inclusion of the child's name is essential to give effective notice to the father.

(c) The notice under par. (a) or (b) shall also inform the parties:

1. That the parental rights of a parent or alleged parent who fails to appear may be terminated;

2. Of the party's right to have an attorney present and that if a person desires to contest termination of parental rights and believes that he or she cannot afford an attorney, the person may ask the state public defender to represent him or her; and

3. That if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within [15] 30 days after judgment is entered for the right to pursue such relief to be preserved.

NOTE: Subd. 3. is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language was inserted by 1995 Wis. Act 225 to correspond with sub. (3) (d). The treatment of this provision by 1995 Wis. Act 275 rendered the bracketed language superfluous.

History: 1973 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447; 1985 a. 94; Sup. Ct. Order, 136 W (2d) xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395, 446; 1995 a. 108, 225, 275, 352.

Judicial Council Note, 1986: Subs. (3) (d) and (4) (c) are amended to require notice to the parties of the time and manner for initiating an appeal from a judgment terminating parental rights. [Re Order eff. 7-1-87]

See notes to 822.03 citing In Interest of A.E.H., 161 W (2d) 277, 468 NW (2d) 190.

Sub. (2m) denies a putative father standing to contest the alleged grounds for termination where the child was conceived as the result of sexual assault. Termination of Parental Rights to A. M. 176 W (2d) 673, 500 NW (2d) 649 (1993).

Sub. (2) (d) requires consideration in each case whether ch. 822 applies, but does not require the application of ch. 822 to intrastate cases. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

Sub. (2) is the exclusive statute for determining what parties may be summoned; intervention under s. 803.09 does not apply. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

Sexual assault under sub. (2m) does not include a violation of s. 948.09, sexual intercourse with a child age 16 or older. Paternity of Michael A.T. 182 W (2d) 395, 513 NW (2d) 669 (Ct. App. 1994).

48.422 Hearing on the petition. (1) The hearing on the petition to terminate parental rights shall be held within 30 days after the petition is filed. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under sub. (4) and s. 48.423.

(2) If the petition is contested the court shall set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately.

(3) If the petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7).

(4) Any party who is necessary to the proceeding or whose rights may be affected by an order terminating parental rights shall be granted a jury trial upon request if the request is made before the end of the initial hearing on the petition.

(5) Any nonpetitioning party, including the child, shall be granted a continuance of the hearing for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for the substitution of a judge.

(6) (a) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established, the court shall hear testimony

concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

(b) If the court determines that an unknown person may be the father of the child and notice to that person has not been waived under s. 48.42 (4) (b) 3., the court shall determine whether constructive notice will substantially increase the likelihood of notice to that person. If the court does determine that it would substantially increase the likelihood of notice and the petitioner has not already caused the notice to be published or the court determines that the publication used was not sufficient, the court shall adjourn the hearing for a period not to exceed 30 days and shall order constructive notice under s. 48.42 (4) (b). If the court determines that constructive notice will not substantially increase the likelihood of notice to that person, the court shall order that the hearing proceed.

(c) If paternity is adjudicated under this subchapter and parental rights are not terminated, the court may make and enforce such orders for the suitable care, custody and support of the child as a court having jurisdiction over actions affecting the family may make under ch. 767. If there is a finding by the court that the child is in need of protection or services, the court may make dispositional orders under s. 48.345.

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

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

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

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

(8) If the petition for termination of parental rights is filed by an agency enumerated in s. 48.069 (1) or (2), the court shall order the agency to submit a report to the court as provided in s. 48.425.

(9) (a) If a petition for termination of the rights of a birth parent, as defined under s. 48.432 (1) (am), is filed by a person other than an agency enumerated under s. 48.069 (1) or (2) or if the court waives the report required under s. 48.425, the court shall order any parent whose rights may be terminated to file with the court the information specified under s. 48.425 (1) (am).

(b) If a birth parent does not comply with par. (a), the court shall order any health care provider as defined under s. 146.81 (1) known to have provided care to the birth parent or parents to provide the court with any health care records of the birth parent or parents that are relevant to the child's medical condition or genetic history. A court order for the release of alcohol or drug abuse treatment records subject to 21 USC 1175 or 42 USC 4582 shall comply with 42 CFR 2.

History: 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 447 ss. 10, 67; 1985 a. 176.

Court erred by failing to inform parents of right to jury trial or to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 W (2d) 432, 342 NW (2d) 410 (1984).

Concurrent TPR/adoption proceedings under 48.835 are subject to requirement under 48.422 that initial hearing be held within 30 days of filing petition. In re J.L.F. 168 W (2d) 634, 484 NW (2d) 359 (Ct. App. 1992).

A court's failure to inform parents of their rights under this section is not reversible error absent prejudice to the parents. Interest of Robert D. 181 W (2d) 887, 512 NW (2d) 227 (Ct. App. 1994).

See note to Art. I, sec. 1, citing *Lassiter v. Dept. of Social Services*, 452 US 18 (1981).

48.423 Rights of persons alleging paternity. If a man who alleges that he is the father of the child appears at the hearing and wishes to contest the termination of his parental rights, the court shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall

inform the man claiming to be the father of the child of any right to counsel under s. 48.23. The man claiming to be the father of the child must prove paternity by clear and convincing evidence.

History: 1979 c. 330.

See note to 48.415, citing *Lehr v. Robertson*, 463 US 248 (1983).

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

48.424 Fact-finding hearing. (1) The purpose of the fact-finding hearing is to determine whether grounds exist for the termination of parental rights in those cases where the termination was contested at the hearing on the petition under s. 48.422.

(2) The fact-finding hearing shall be conducted according to the procedure specified in s. 48.31 except that:

- (a) The court may exclude the child from the hearing; and
- (b) The hearing shall be closed to the public.

(3) If the facts are determined by a jury, the jury may only decide whether any grounds for the termination of parental rights have been proven. The court shall decide what disposition is in the best interest of the child.

(4) If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if:

(a) All parties to the proceeding agree; or

(b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 from an agency enumerated in s. 48.069 (1) or (2) and the court now directs the agency to prepare this report to be considered before the court makes the disposition on the petition.

(5) If the court delays making a permanent disposition under sub. (4), it may transfer temporary custody of the child to an agency for placement of the child until the dispositional hearing.

History: 1979 c. 330; 1987 a. 383.

Court erred by instructing jury that jury determines whether parental rights are to be terminated. In Interest of C.E.W. 124 W (2d) 47, 368 NW (2d) 47 (1985).

48.425 Court report by an agency. (1) If the petition for the termination of parental rights is filed by an agency, or if the court orders a report under s. 48.424 (4) (b), the agency shall file a report with the court which shall include:

(a) The social history of the child.

(am) A medical record of the child on a form provided by the department which shall include:

1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.

2. A report of any medical examination which either birth parent had within one year before the date of the petition.

3. A report describing the child's prenatal care and medical condition at birth.

4. The medical and genetic history of the child and any other relevant medical and genetic information.

(b) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned to the family, and the steps the person or agency has taken to effect this return.

(d) A statement of other appropriate services, if any, which might allow the child to return to the home of the parent.

(e) A statement applying the standards and factors enumerated in s. 48.426 (2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (3m) (a) 1. to 4. and include a presentation of the factors which might prevent adoption, those which would facilitate it, and the agency which would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427 (3m) (a) 1. to 4. determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child or a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian of the child.

(1m) The agency required under sub. (1) to file the report shall prepare the medical record within 60 days after the date of the petition for the termination of parental rights.

(2) The court may waive the report required under this section if consent is given under s. 48.41, but shall order the birth parent or parents to provide the department with the information specified under sub. (1) (am).

(3) The court may order a report as specified under this section to be prepared by an agency in those cases where the petition is filed by someone other than an agency.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275.

48.426 Standard and factors. (1) COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) **STANDARD.** The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) **FACTORS.** In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

History: 1979 c. 330.

Where grandparents opposing termination had a substantial relationship with the child and wished to participate in the proceedings, it was error to exclude their testimony in determining the child's best interest. In Interest of Brandon S.S. 179 W (2d) 114, 507 NW (2d) 94 (1993).

48.427 Dispositions. (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

(1m) In addition to any evidence presented under sub. (1), the court shall permit the foster parent, treatment foster parent or other

physical custodian described in s. 48.62 (2) of the child to make a written or oral statement during the fact-finding or dispositional hearing or to submit a written statement prior to disposition, relevant to the issue of disposition.

(2) The court may dismiss the petition if it finds that the evidence does not warrant the termination of parental rights.

(3) The court may enter an order terminating the parental rights of one or both parents.

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall either:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).

3. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

4. The department.

5. A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative.

6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1. to 4. and custody of the child to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(3p) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has been appointed under s. 48.977, the court may enter one of the orders specified in sub. (3m). If the court enters an order under this subsection, the court shall terminate the guardianship under s. 48.977.

(4) If the rights of one or both parents are terminated under sub. (3), the court may enter an order placing the child in sustaining care under s. 48.428.

(6) If an order is entered under sub. (3), the court shall:

(a) Inform each birth parent, as defined under s. 48.432 (1) (am), whose rights have been terminated of the provisions of ss. 48.432 and 48.433.

(b) Forward to the department:

1. The name and date of birth of the child whose birth parent's rights have been terminated.

2. The names and current addresses of the child's birth parents, guardian and legal custodian.

3. The medical and genetic information obtained under s. 48.422 (9) or 48.425 (1) (am) or (2).

(7) (a) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10).

(b) In addition to the notice permitted under par. (a), any written order under sub. (3) may notify the parent or parents of the information specified in par. (a).

History: 1979 c. 330; 1981 c. 81, 359; 1985 a. 70, 176; 1995 a. 275, 289.

Despite jury findings, court may dismiss termination petition if evidence does not support a finding or unfitness evidence is not so egregious as to warrant termination; whether evidence supports termination is matter of discretion. In Interest of K.D.J., 163 W (2d) 90, 470 NW (2d) 914 (1991).

48.428 Sustaining care. (1) A court may place a child in sustaining care if the court has terminated the parental rights of the parent or parents of the child or has appointed a guardian for the child under s. 48.831 and the court finds that the child is unlikely to be adopted or that adoption is not in the best interest of the child.

(2) (a) Except as provided in par. (b), when a court places a child in sustaining care after an order under s. 48.427 (4), the court shall transfer legal custody of the child to the county department or a licensed child welfare agency, transfer guardianship of the

child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent, licensed treatment foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

NOTE: Par. (a) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) When a court places a child in sustaining care after an order under s. 48.427 (4) with a person who has been appointed as the guardian of the child under s. 48.977 (2), the court may transfer legal custody of the child to the county department or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent or licensed treatment foster parent with whom the child has resided for 6 months or longer. Pursuant to such a placement, that licensed foster parent or licensed treatment foster parent shall be a sustaining parent with the powers and duties specified in sub. (3). If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4., the court shall terminate the guardianship under s. 48.977.

(3) Subject to the authority of the guardian and legal custodian of the child and to any treatment or dispositional plans for the child established by the court, the sustaining parent has the rights and responsibilities necessary for the day-to-day care of the child, including but not limited to:

(a) The authority to consent to routine and emergency health care for the child.

(b) The authority to sign the child's application for a license under s. 343.15.

(c) The authority to approve the child's participation in school and youth group activities.

(d) The authority to travel out of state with the child and consent to the child's travel out of state.

(e) The authority to act as the child's parent under ss. 115.80, 115.81 and 118.125.

(4) Before a licensed foster parent, licensed treatment foster parent or kinship care relative may be appointed as a sustaining parent, the foster parent, treatment foster parent or kinship care relative shall execute a contract with the agency responsible for providing services to the child, in which the foster parent, treatment foster parent or kinship care relative agrees to provide care for the child until the child's 18th birthday unless the placement order is changed by the court because the court finds that the sustaining parents are no longer able or willing to provide the sustaining care or the court finds that the behavior of the sustaining parents toward the child would constitute grounds for the termination of parental rights if the sustaining parent was the birth parent of the child.

(6) The court may order or prohibit visitation by a birth parent of a child placed in sustaining care.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359 s. 16; 1985 a. 70; 1985 a. 176; 1989 a. 161; 1993 a. 446; 1995 a. 275, 289; s. 13.93 (2) (c).

48.43 Court orders; contents and effect; review.

(1) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. If the court dismisses the petition under s. 48.427 (2), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427 (3), the order shall contain all of the following:

(a) The identity of any agency or individual that has received guardianship of the child or will receive guardianship or custody of the child upon termination and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

(b) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible.

(c) If an agency receives custody of the child under par. (a), the child's permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan, the agency shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within 60 days from the date of the order.

(2) An order terminating parental rights permanently severs all legal rights and duties between the parent and the child.

(3) If only one parent consents under s. 48.41 or if the grounds specified in s. 48.415 are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent.

(4) A certified copy of the order terminating parental rights shall be furnished by the court to the agency given guardianship for placement for adoption of the child or to the person or agency given custodianship or guardianship for placement of the child in sustaining care and to the person appointed as the guardian of the child under s. 48.977 (2). The court shall, upon request, furnish a certified copy of the child's birth certificate and a transcript of the testimony in the termination of parental rights hearing to the same person or agency.

(5) (a) If the custodian specified in sub. (1) (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child is adopted or reaches 18 years of age, whichever is sooner. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any, and shall describe any progress that has been made in finding a permanent placement for the child.

(b) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (a). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's guardian, the child, if he or she is 12 years of age or over, and the child's foster parent, treatment foster parent, other physical custodian described in s. 48.62 (2) or the operator of the facility in which the child is living.

(c) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c), except the determinations relating to the child's parents. The court may amend the order under sub. (1) to transfer the child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1. to 4. which consents to the transfer, if the court determines that the transfer is in the child's best interest. If an order is amended, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

(5m) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child, if he or she is 12 years of age or over, and to the child's foster parent, the child's treatment foster parent or the operator of the facility in which the child is living.

(6) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107.

(7) If the agency specified under sub. (1) (a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department. The court shall transfer the child's custody to the county department

specified in the petition. The department shall remain the child's guardian.

History: 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 W (2d) xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275.

Appeal process in termination case must be commenced within 30 days after order is entered. In Interest of JD, 106 W (2d) 126, 315 NW (2d) 365 (1982).

48.432 Access to medical information. (1) In this section:

(a) "Adoptee" means a person who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(ag) "Agency" means a county department or a licensed child welfare agency.

(am) "Birth parent" means either:

1. The mother designated on the individual's or adoptee's original birth certificate.

2. One of the following:

a. The adjudicated father.

b. If there is no adjudicated father, the husband of the mother at the time the individual or adoptee is conceived or born, or when the parents intermarry under s. 767.60.

(b) "Individual" means a person whose birth parent's rights have been terminated in this state at any time.

(2) (a) The department, or agency contracted with under sub. (9), shall maintain all information obtained under s. 48.427 (6) (b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department, or agency contracted with under sub. (9), any relevant medical or genetic information about the child or the child's birth parents, and the department or agency shall maintain the information in the centralized birth record file.

(3) (a) The department, or agency contracted with under sub. (9), shall release the medical information under sub. (2) to any of the following persons upon request:

1. An individual or adoptee 18 years of age or older.

2. An adoptive parent of an adoptee.

3. The guardian or legal custodian of an individual or adoptee.

4. The offspring of an individual or adoptee if the requester is 18 years of age or older.

5. An agency or social worker assigned to provide services to the individual or adoptee or place the individual for adoption.

(b) Before releasing the information under par. (a), the department, or agency contracted with under sub. (9), shall delete the name and address of the birth parent and the identity of any provider of health care to the individual or adoptee or to the birth parent.

(c) The person making a request under this subsection shall pay a fee for the cost of locating, verifying, purging, summarizing, copying and mailing the medical or genetic information according to a fee schedule established by the department, or agency contracted with under sub. (9), based on ability to pay. The fee may not be more than \$150 and may be waived by the department or agency.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about an individual whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such an individual or adoptee, and the information is not on file with the department, or agency contracted with under sub. (9), the person may request that the department or agency conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the individual or adoptee has or may have acquired a genetically transferable disease or that

the individual's or adoptee's medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department, or agency contracted with under sub. (9), shall undertake a diligent search for the individual's or adoptee's parents.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (9), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department, or agency contracted with under sub. (9), shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent's identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department, or agency contracted with under sub. (9), shall notify the requester, without disclosing the birth parent's identity or location, and the requester may petition the circuit court to order the birth parent to disclose the information. The court shall grant the motion for good cause shown.

(7) (a) If the department or another agency that maintains records relating to the adoption of an adoptee or the termination of parental rights receives a report from a physician stating that a birth parent or another offspring of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the individual or adoptee of the existence of the disease, if he or she is 18 years of age or over, or notify the individual's or adoptee's guardian, custodian or adoptive parent if the individual or adoptee is under age 18.

(b) If the department or agency receives a report from a physician that an individual or adoptee has acquired or may have a genetically transferable disease, the department or agency shall notify the individual's or adoptee's birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(8m) The department, or agency contracted with under sub. (9), shall give priority to all of the following:

(a) Reports filed by physicians under sub. (7).

(b) A request or a court order for medical or genetic information under subs. (3) and (4) if it is accompanied by a statement from a physician certifying that a child has acquired or may have a genetically transferable disease.

(c) Any reports and requests specified by the department by rule.

(9) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.

History: 1981 c. 359; 1983 a. 447, 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27.

48.433 Access to identifying information about parents. (1) In this section:

(a) "Agency" has the meaning given under s. 48.432 (1) (ag).

(b) "Birth parent" has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department, or agency contracted with under sub. (11), an affidavit authorizing the department or agency to provide the child with his or her original birth certificate and with any other available information about the birth parent's identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department or agency in writing.

(3) Any person 21 years of age or over whose birth parent's rights have been terminated in this state or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982, may request the department, or agency contracted with under sub. (11), to provide the person with the following:

(a) The person's original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department, or agency contracted with under sub. (11), shall require the requester to provide adequate identification.

(5) The department, or agency contracted with under sub. (11), shall disclose the requested information in either of the following circumstances:

(a) The department, or agency contracted with under sub. (11), has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6) (a) If the department, or agency contracted with under sub. (11), does not have on file an affidavit from each known birth parent, it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request, unless the search falls within one of the exceptions established by the department by rule. If any information has been provided under sub. (5), the department or agency is not required to conduct a search.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (11), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7) (a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.
2. The date of the request.
3. The fact that the birth parent has the right to file with the department the affidavit under sub. (2).

(b) Within 3 working days after contacting a birth parent, the department, or agency contracted with under sub. (11), shall send the birth parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department, or agency contracted with under sub. (11), shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department, or agency contracted with under sub. (11), may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8) (a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department, or agency contracted with under sub. (11), shall so inform the requester. The department or agency may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information it has on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).

2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, or agency contracted with under sub. (11), in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department or agency.

(8m) If the department, or agency contracted with under sub. (11), may not disclose the information requested under this section, it shall provide the requester with any nonidentifying social history information about either of the birth parents that it has on file.

(9) The requester may petition the circuit court to order the department or agency designated by the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.

History: 1981 c. 359, 391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27.

48.435 Custody of children. The mother of a nonmarital child has legal custody of the child unless the court grants legal custody to another person or transfers legal custody to an agency.

History: 1979 c. 330; 1983 a. 447.

SUBCHAPTER IX

JURISDICTION OVER PERSON 17 OR OLDER

48.44 Jurisdiction over persons 17 or older. (1) The court has jurisdiction over persons 17 or older as provided under ss. 48.355 (4) and 48.45 and as otherwise specifically provided in this chapter.

(2) The court has jurisdiction over a person subject to an order under s. 48.366 for all matters relating to that order.

History: 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354; 1987 a. 27; 1989 a. 121; 1995 a. 27.

48.45 Orders applicable to adults. (1) (a) If in the hearing of a case of a child alleged to be in a condition described in s. 48.13 it appears that any person 17 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.

(b) An act or failure to act contributes to a condition of a child as described in s. 48.13, although the child is not actually adjudicated to come within the provisions of s. 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. 48.13.

(1m) (a) In a proceeding in which a child has been found to be in need of protection or services under s. 48.13, the judge may order the child's parent, guardian or legal custodian to comply with any conditions determined by the judge to be necessary for the child's welfare. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or parent training and education and to make a reasonable contribution, based on ability to pay, toward the cost of those services.

(b) A judge may not order inpatient treatment under par. (a) for a child's parent, guardian or legal custodian. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51.

(2) No order under sub. (1) (a) or (1m) (a) may be entered until the person who is the subject of the contemplated order is given an opportunity to be heard on the contemplated order. The court shall cause notice of the time, place and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases in the court. At the hearing the person may be represented by counsel and may produce and cross-examine witnesses. Any person who fails to comply with any order issued by a court under sub. (1) (a) or (1m) (a) may be proceeded against for contempt of court. If the person's conduct involves a crime, the person may be proceeded against under the criminal law.

(3) If it appears at a court hearing that any person 17 or older has violated s. 948.40, the judge shall refer the record to the district attorney for criminal proceedings as may be warranted in the district attorney's judgment. This subsection does not prevent prosecution of violations of s. 948.40 without the prior reference by the judge to the district attorney, as in other criminal cases.

History: 1977 c. 354, 449; 1987 a. 332 s. 64; 1989 a. 121; 1993 a. 118, 377; 1995 a. 27, 77.

Involuntary commitment was not authorized by this section. Contempt In Interest of J. S., 137 W (2d) 217, 404 NW (2d) 79 (Ct. App. 1987).

SUBCHAPTER X

REHEARING AND APPEAL

48.46 New evidence; relief from judgment terminating parental rights. (1) Except as provided in sub. (2), the parent, guardian or legal custodian of the child or the 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. Upon a showing that such evidence does exist, the court shall order a new hearing.

(2) A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent

files a timely notice of intent to pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall be filed within the time permitted by s. 809.107 (5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. Motions under this subsection and appeals to the court of appeals shall be the exclusive remedies for such a parent to obtain a new hearing in a termination of parental rights proceeding.

History: 1977 c. 449; 1979 c. 300; 1987 a. 383; Sup. Ct. Order, 146 W (2d) xxxiii (1988); 1995 a. 275.

Judicial Council Note, 1988: Sub. (2) limits the remedies for relief from a judgment or order terminating parental rights when the aggrieved party is a parent whose rights were terminated by consent or who has failed to contest the petition. The motion for relief from the judgment or order must be filed within 40 days after entry of the judgment or order terminating parental rights, unless the appellate process is timely initiated, in which case the motion must be filed within 60 days after service of the transcript. The court must grant a rehearing upon a prima facie showing of one or more of the following grounds: mistake, inadvertence, surprise or excusable neglect; newly discovered evidence justifying a new hearing under s. 805.15 (3); fraud, misrepresentation or other misconduct of an adverse party; the judgment or order is void; the judgment or order is based upon a prior judgment which has been reversed or otherwise vacated. [Re Order effective Jan. 1, 1989]

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.

SUBCHAPTER XI

AUTHORITY

48.48 Authority of department of health and family services. The department of health and family services shall have authority:

(1) To promote the enforcement of the laws relating to non-marital children 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 departments, 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 guardianship of children when appointed by the court, and to provide special treatment and care when directed by the court. A court may not direct the department to administer psychotropic medications to children who receive special treatment or care under this subsection.

(3m) To accept appointment by an American Indian tribal court in this state as guardian of a child for the purpose of making an adoptive placement for the child if all of the following conditions exist:

(a) The child does not have parents or a guardian or the parental rights to the child have been terminated by a tribal court in accordance with procedures that are substantially equivalent to the procedures specified in subch. VIII.

(b) The tribal court has transferred the guardianship or legal custody, or both, of the child to the department, if the child does not have parents or a guardian.

(c) The tribal court's judgment for termination of parental rights identifies the department as the agency that will receive guardianship or legal custody, or both, of the child upon termination, if the parental rights to the child have been terminated.

(d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485.

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

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

(8m) To enter into agreements with American Indian tribes in this state to implement the Indian child welfare act, 25 USC 1911 to 1963.

(9) To license foster homes or treatment foster homes as provided in s. 48.66 (1) for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county departments.

(9m) To license shelter care facilities as provided in s. 48.66 (1).

(10) To license child welfare agencies and day care centers as provided in s. 48.66 (1).

(11) When notified of the birth or expected birth of a child who is or is likely to be a nonmarital child, to see that the interests of the child are safeguarded, that steps are taken to establish the child's paternity and that there is secured for the child, if possible, the care, support and education the child would receive if he or she were a marital child.

(12) (a) To enter into an agreement to assist in the cost of care of a child after legal adoption when the department has determined that such assistance is necessary to assure the child's adoption. Agreements under this paragraph shall be made in accordance with s. 48.975. Payments shall be made from the appropriation under s. 20.435 (3) (dd).

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

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

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

(16) To establish and enforce standards for services provided under s. 48.345.

History: 1973 c. 90, 333; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 354, 418, 447, 449; 1979 c. 34 ss. 833m, 834, 2102 (20) (a); 1979 c. 221, 300; 1983 a. 27 s. 2202 (20); 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 135, 176; 1985 a. 332 s. 251 (3); 1987 a. 339; 1989 a. 31, 107, 359; 1991 a. 316; 1993 a. 16, 375, 385, 446, 491; 1995 a. 27 ss. 2526 to 2534m, 9126 (19), 9145 (1); 1995 a. 77.

Allegation that department failed to adopt rules or to exercise supervision over local social service agency and that those failures led to deprivation of child custody without due process stated cause of action for deprivation of civil rights. *Roe v. Borup*, 500 F Supp. 127 (1980).

The state has ultimate foster care responsibility, and dismissal of a 42 USC 1983 action against the state for civil rights violations by a county agency was not appropriate. *Jeanine B. by Blondin v. Thompson*, 877 F Supp. 1268 (1995).

48.485 Transfer of tribal children to department for adoption. If the department accepts guardianship or legal custody or both from an American Indian tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive placement for the child. If a permanent adoptive placement is not in progress within 2 years after entry of the termination of parental rights order by the tribal court, the department may petition the tribal court to transfer legal custody or guardianship of the child back to the tribe.

History: 1989 a. 31.

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

- (a) Receiving homes to be used for the temporary care of children;
- (b) Foster homes or treatment foster homes;
- (c) Group homes; and
- (f) Other facilities deemed by the department to be appropriate for the child, except that no state funds may be used for the maintenance of a child in the home of a parent or relative eligible for aid under s. 49.19 if such funds would reduce federal funds to this state.

(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. 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 whom the department has placed in that facility.

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

History: 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90; 1975 c. 39, 430; 1977 c. 354; 1979 c. 89; 1987 a. 332 s. 64; 1989 a. 31, 107; 1993 a. 385, 446; 1995 a. 27 ss. 2541 to 2541r, 9126 (19); 1995 a. 77.

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.

48.547 Juvenile alcohol and other drug abuse pilot program. (1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by children is a state responsibility of statewide dimension. The legislature recognizes that there is a lack of adequate procedures to screen, assess and treat children for alcohol and other drug abuse.

To reduce the incidence of alcohol and other drug abuse by children, the legislature deems it necessary to experiment with solutions to the problems of the use and abuse of alcohol and other drugs by children by establishing a juvenile alcohol and other drug abuse pilot program in a limited number of counties. The purpose of the program is to develop intake and court procedures that screen, assess and give new dispositional alternatives for children with needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter and ch. 938 in the pilot counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.435 (7) (mb) that is available for the pilot program, the department shall select counties to participate in the pilot program. Unless a county department of human services has been established under s. 46.23 in the county that is seeking to implement a pilot program, the application submitted to the department shall be a joint application by the county department that provides social services and the county department established under s. 51.42 or 51.437. The department shall select counties in accordance with the request for proposal procedures established by the department. The department shall give a preference to county applications that include a plan for case management. The counties selected shall begin the pilot program on January 1, 1989.

(3) MULTIDISCIPLINARY SCREEN. By September 1, 1988, the department shall develop a multidisciplinary screen for the pilot program. The screen shall be used by an intake worker to determine whether or not a child is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen children for:

- (a) Family dysfunction.

- (b) School or truancy problems.
- (c) Mental health problems.
- (d) Delinquent behavior patterns.

(4) **ASSESSMENT CRITERIA.** By September 1, 1988, the department shall develop uniform alcohol and other drug abuse assessment criteria to be used in the pilot program under ss. 48.245 (2) (a) 3. and 48.295 (1). An approved treatment facility that assesses a person under s. 48.245 (2) (a) 3. or 48.295 (1) may not also provide the person with treatment unless the department permits the approved treatment facility to do both in accordance with the criteria established by rule by the department.

History: 1987 a. 339; 1989 a. 31; 1993 a. 213; 1995 a. 77, 448.

48.548 Multidisciplinary screen and assessment criteria. The department shall make the multidisciplinary screen developed under s. 48.547 (3) and the assessment criteria developed under s. 48.547 (4) available to all counties.

History: 1987 a. 339.

48.55 State adoption information exchange. The department shall establish a state adoption information exchange for the purpose of finding adoptive homes for children with special needs who do not have permanent homes. The department shall adopt rules governing the adoption information exchange and, from the appropriation under s. 20.435 (6) (dg) [20.435 (3) (dg)], may provide not more than \$75,000 in each fiscal year as grants to individuals and private agencies for adoption information exchange services.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

History: 1983 a. 27; 1995 a. 266.

48.551 State adoption center. (1) The department shall establish a state adoption center for the purposes of increasing public knowledge of adoption and promoting to adolescents and pregnant women the availability of adoption services. From the appropriation under s. 20.435 (3) (dg), the department may provide not more than \$75,000 in grants in each fiscal year to individuals and private agencies to operate the adoption center.

(2) The department shall promulgate rules specifying the functions of the state adoption center, which shall include:

- (a) Training persons who provide counseling to adolescents including school counselors, county employes providing child welfare services under s. 48.56 and family planning clinic employes.
- (b) Seeking persons to undergo training.
- (c) Operating a toll-free telephone number to provide information and referral services.
- (d) Distributing pamphlets which provide information on the availability of adoption services.
- (e) Promoting adoption through the communications media.

History: 1985 a. 56, 176; 1989 a. 31 ss. 1283, 1284; Stats. 1989 s. 48.551; 1995 a. 27, 443.

SUBCHAPTER XII

COUNTY CHILD WELFARE SERVICES

48.56 County child welfare services. (1) Each county shall provide child welfare services through its county department.

(2) Each county department shall employ personnel who devote all or part of their time to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

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

History: 1975 c. 307; 1977 c. 271; 1985 a. 176; 1991 a. 160.

48.57 Powers and duties of county departments providing child welfare services. (1) Each county department shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors or donated by individuals or private organizations. It shall have authority:

(a) To investigate the conditions surrounding nonmarital children 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, the county department shall offer social services to the caretaker of any child who is referred to it under the conditions specified in this paragraph. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of 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. A court may not order a county department to administer psychotropic medications to children who receive special treatment or care under this paragraph.

(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, licensed treatment 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, except that the county department shall not purchase the educational component of private day treatment programs unless the county department, the school board as defined in s. 115.001 (7) and the department of education all determine that an appropriate public education program is not available. Disputes between the county department and the school district shall be resolved by the department of education.

NOTE: Par. (c) is shown as amended eff. 1-1-96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95-2168-OA. Prior to Act 27 it read:

(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, licensed treatment 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, except that the county department shall not purchase the educational component of private day treatment programs unless the county department, the school board as defined in s. 115.001 (7) and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the county department and the school district shall be resolved by the state superintendent of public instruction.

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

(e) If a county department in a county with a population of 500,000 or more, to place children in a county children's home in the county under policies adopted by the county board of supervisors, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption.

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

(g) Upon request of the department of health and family services or the department of corrections, to provide service for any child in the care of those departments.

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

(hm) If a county department in a county with a population of less than 500,000, to accept guardianship, when appointed by the court, of a child whom the county department has placed in a foster home or treatment foster home under a court order or voluntary agreement under s. 48.63 and to place that child under its guardianship for adoption by the foster parent or treatment foster parent.

(i) To license foster homes or treatment foster homes in accordance with s. 48.75.

(j) To use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

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

(3) (a) From the reimbursement received under s. 46.495 (1) (d), counties may provide funding for the maintenance of any child who:

1. Is 18 years of age or older;
2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;
3. Received funding under s. 46.495 (1) (d) immediately prior to his or her 18th birthday; and
4. Is living in a foster home, treatment foster home, group home or child caring institution.

(b) The funding provided for the maintenance of a child under par. (a) shall be in an amount equal to that which the child would receive under s. 46.495 (1) (d) if the child were 17 years of age.

(3m) (a) In this subsection:

1. “Department” means the department of industry, labor and job development.

2. “Kinship care relative” means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great–great, whether by consanguinity, direct affinity or legal adoption, or the spouse of any person named in this subdivision, even if the marriage is terminated by death or divorce.

NOTE: Par. (a) is repealed and recreated eff. 7–1–97 by 1995 Wis. Act 289 to read:

(a) In this subsection, “kinship care relative” means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great–great, whether by consanguinity, direct affinity or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriations under s. 20.445 (3) (d) and (p), the department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

NOTE: Par. (am) (intro.) is repealed and recreated eff. 7–1–97 by 1995 Wis. Act 289 to read:

(am) From the appropriations under s. 20.435 (7) (b) and (o), the department shall reimburse counties for payments made under this subsection. A county department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department for payments under this subsection and the county department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13 or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

4. The county department conducts a background investigation under sub. (3p) of the kinship care relative, the employes and prospective employes of the kinship care relative who have or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative’s home to determine if the kinship care relative or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative’s ability to care for the child.

4m. Subject to sub. (3p) (fm), the kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the kinship care relative’s ability to care for the child and that no adult resident, as defined in sub. (3p) (a), and no employe or prospective employe of the kinship care

relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the kinship care relative’s ability to care for the child.

5. The kinship care relative cooperates with the county department in the application process, including applying for other forms of assistance for which the kinship care relative may be eligible.

(b) 1. The county department shall refer to the attorney responsible for support enforcement under s. 59.458 (1) [59.53 (6) (a)] the name of the parent or parents of a child for whom a payment is made under par. (am).

NOTE: The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

2. When any kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child’s parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child who is the beneficiary of a payment under this subsection is also the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A kinship care relative who receives a payment under par. (am) is not eligible to receive a payment under s. 48.62 (4).

(d) The county department shall review a placement of a child for which the department of industry, labor and job development makes payments under par. (am) not less than every 12 months after the department of industry, labor and job development begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the department shall discontinue making those payments.

NOTE: Par. (d) is repealed and recreated eff. 7–1–97 by 1995 Wis. Act 289 to read:

(d) A county department shall review a placement of a child for which the county department makes payments under par. (am) not less than every 12 months after the county department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department shall discontinue making those payments.

(e) The department of health and family services, in consultation with the department of industry, labor and job development, shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

NOTE: Par. (e) is repealed and recreated eff. 7–1–97 by 1995 Wis. Act 289 to read:

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(3p) (a) In this subsection, “adult resident” means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6–month period at the home of a person who has applied for or is receiving payments under sub. (3m).

(b) 1. After receipt of an application for payments under sub. (3m), the county department, with the assistance of the department of justice, shall conduct a background investigation of the applicant.

2. The county department, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3m) at the time of

review under sub. (3m) (d) or at any other time that the county department considers to be appropriate.

(c) 1. After receipt of an application for payments under sub. (3m), the county department, with the assistance of the department of justice, shall, in addition to the investigation under par. (b), conduct a background investigation of all employes and prospective employes of the applicant who have or would have regular contact with the child for whom those payments are being made and of each adult resident.

2. The county department, with the assistance of the department of justice, may conduct a background investigation of any of the employes or prospective employes of any person who is receiving payments under sub. (3m) who have or would have regular contact with the child for whom those payments are being made and of each adult resident at the time of review under sub. (3m) (d) or at any other time that the county department considers to be appropriate.

3. Before a person that is receiving payments under sub. (3m) may employ any person in a position in which that person would have regular contact with the child for whom those payments are being made or permit any person to be an adult resident, the county department, with the assistance of the department of justice, shall conduct a background investigation of the prospective employe or prospective adult resident unless that person has already been investigated under subd. 1. or 2.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the county department shall require the person to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the county department with all of the following information:

1. The person's name.
2. The person's social security number.
3. Other identifying information, including the person's birthdate, gender, race and any identifying physical characteristics.
4. Information regarding the conviction record of the person under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule.

(fm) 1. The county department may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m) (am) 4m. The county department may not finally approve the making of payments under sub. (3m) unless that county department receives information from the department of justice indicating that the conviction record of the applicant under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. The department of industry, labor and job development may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

2. A person receiving payments under sub. (3m) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department that the employe or adult resident does not have any arrests or convictions that could adversely affect the child or the ability

of the person receiving payments to care for the child. A person receiving payments under sub. (3m) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. and the county department so advises the department and the person receiving payments under sub. (3m). A person receiving payments under sub. (3m) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department that the federal bureau of investigation indicates that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

(g) The department may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

NOTE: Par. (g) (intro.) is amended eff. 7-1-97 by 1995 Wis. Act 289, s. 71f, to read as shown below. The bracketed language was deleted from the creation of this provision by the governor's partial veto of 1995 Wis. Act 289, s. 71d. Section 71f shows the bracketed language as if it had been enacted by s. 71d.

(g) [Subject to par. (h),] the county department may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 161 [ch. 961] that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 161 [ch. 961] that is punishable as a felony if committed in this state.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

2. The person has had imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64, 939.641 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the applicant or other person would be subject to a penalty specified in any of those sections if convicted in this state.

3. The person has been convicted of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, if committed in this state, except that the department may make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may employ in a position in which the person would have regular contact with the child for whom those payments are being made or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31 or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31 or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(i) The county department shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation. Such information is not subject to inspection or copying under s. 19.35.

(j) The county department may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

(3t) Notwithstanding subs. (3m) and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe to allow that governing body to

administer the program under subs. (3m) and (3p) within the boundaries of that reservation.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443.

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 in populous counties.

(1) Any existing county children's home in counties with a population of 500,000 or more may do any of the following:

(b) Provide care for children in need of protection or services, and delinquent juveniles referred by the county department, if the delinquent juveniles are placed in separate facilities;

(c) Provide temporary shelter care for children in need of protection or services and delinquent juveniles; provided that the delinquent juveniles are placed in separate facilities.

(d) Provide temporary shelter care for children taken into custody under s. 48.19 or 938.19.

History: 1973 c. 90; 1975 c. 39, 189, 224; 1977 c. 29, 194, 271, 354, 418, 447, 449; 1979 c. 34 s. 2102 (20) (a); 1979 c. 300; 1981 c. 20; 1985 a. 176; 1995 a. 77.

48.59 Examination and records. (1) The county department shall investigate the personal and family history and environment of any child transferred to its legal custody or placed under its supervision under s. 48.345 and make any physical or mental examinations of the child considered necessary to determine the type of care necessary for the child. The county department shall screen a child who is examined under this subsection to determine whether the child is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance. The county department 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 or under the supervision of the county department.

(2) At the department's request, the county department shall report to the department regarding children in the legal custody or under the supervision of the county department.

History: 1977 c. 449; 1985 a. 176; 1993 a. 385, 446, 491; 1995 a. 77.
See note to 19.21, citing 70 Atty. Gen. 196.

SUBCHAPTER XIII

CHILD WELFARE AGENCIES

48.599 Definitions. In this subchapter:

(1) "Physical restraint" includes all of the following:

(a) A locked room.

(b) A device or garment that interferes with a child's freedom of movement and that the child is unable to remove easily.

(c) Restraint by a child welfare agency staff member of a child by use of physical force.

(2) "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

History: 1989 a. 336.

48.60 Child welfare agencies licensed. (1) No person may receive children, with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months' period for 4 or more such children at any one time unless that person obtains a license to operate a child welfare agency from the department. To obtain a license under this subsection to operate a child welfare agency, a person must meet the minimum requirements for a license established by the department under s. 48.67 and pay the applicable license fee under s. 48.615 (1) (a) or

(b). A license issued under this subsection is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

(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 or a licensed treatment foster home.

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

(g) A licensed group home.

(h) A youth village program as described in s. 118.42.

(3) Before issuing any license to a child welfare agency under this section, the department of health and family services shall review the need for the additional placement resources that would be made available by the licensing or relicensing of any child welfare agency after August 5, 1973, providing care authorized under s. 48.61 (3). Neither the department of health and family services nor the department of corrections may make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for the additional placement resources.

(4) (a) In this subsection, "child with exceptional educational needs" has the meaning given in s. 115.76 (3).

(b) Notwithstanding ss. 115.85 (2), 121.78 (3) (a) and 121.79 (1) (a), a child welfare agency shall pay for the costs incurred by a school district in providing education and related services to a child with exceptional educational needs who is a resident of the child welfare agency, if the child was placed in the child welfare agency pursuant to the interstate compact on the placement of children under s. 48.988.

(5) (a) No later than 24 hours after the death of a child who resided in a building operated by a child welfare agency, the child welfare agency shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication for the child.

3. There is reasonable cause to believe that the death was a suicide.

(c) No later than 14 days after the date of the death reported under par. (a), the department shall investigate the death.

History: 1973 c. 90; 1975 c. 39; 1979 c. 300; 1989 a. 31, 107, 336; 1991 a. 39; 1993 a. 446; 1995 a. 27 ss. 2582, 9126 (19); 1995 a. 77.

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

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

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

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

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

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

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

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

History: 1977 c. 354 s. 101; 1977 c. 418, 449; 1979 c. 300; 1991 a. 316; 1993 a. 446.

48.615 Child welfare agency licensing fees. (1) (a) Before the department may issue a license under s. 48.60 (1) to a child welfare agency that regularly provides care and maintenance for children within the confines of its building, the child welfare agency must pay to the department a biennial fee of \$100, plus a biennial fee of \$15 per child, based on the number of children that the child welfare agency is licensed to serve.

(b) Before the department may issue a license under s. 48.60 (1) to a child welfare agency that places children in licensed foster homes, licensed treatment foster homes and licensed group homes, the child welfare agency must pay to the department a biennial fee of \$210.

(c) A child welfare agency that wishes to renew a license issued under s. 48.60 (1) shall pay the applicable fee under par. (a) or (b) by the renewal date of the license.

(d) A new child welfare agency shall pay the applicable fee under par. (a) or (b) no later than 30 days before the opening of the child welfare agency.

(2) A child welfare agency that wishes to renew a license issued under s. 48.60 (1) and that fails to pay the applicable fee under sub. (1) (a) or (b) by the renewal date of the license or a new child welfare agency that fails to pay the applicable fee under sub. (1) (a) or (b) by 30 days before the opening of the child welfare agency shall pay an additional fee of \$5 per day for every day after the deadline that the agency fails to pay the fee.

History: 1991 a. 39; 1993 a. 446; 1995 a. 27.

SUBCHAPTER XIV

FOSTER HOMES AND TREATMENT FOSTER HOMES

48.62 Licensing of foster homes and treatment foster homes; rates. (1) (a) Any person who receives, with or without transfer of legal custody, 4 or fewer children or more than 4 children if all of the children are siblings to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75.

(b) Any person who receives, with or without transfer of legal custody, 4 or fewer children into a home to provide care and maintenance and structured, professional treatment for those children shall obtain a license to operate a treatment foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75.

(2) A relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) or a guardian of a child, who provides care and maintenance for a child, is not required to obtain the license specified in this section. The department, county department or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home or a treatment foster home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster home or treatment foster home for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63. The department, a county department or a licensed child welfare agency may, at the request of a guardian appointed under s. 48.977 or ch. 880, license the guardian's home as a foster home or treatment foster home for the guardian's minor ward who is living in the home and who is placed in the home by court order. Relatives with no duty of support and guardians appointed under s. 48.977

or ch. 880 who are licensed to operate foster homes or treatment foster homes are subject to the department's licensing rules.

(3) When the department, a county department or a child welfare agency issues a license to operate a foster home, the department, county department or child welfare agency shall notify the clerk of the school district in which the foster home is located that a foster home has been licensed in the school district.

(4) Monthly payments in foster care shall be provided according to the age-related rates specified in this subsection. Beginning on January 1, 1993, the age-related rates are: \$240 for children aged 4 and under; \$267 for children aged 5 to 11; \$327 for children aged 12 to 14 and \$337 for children aged 15 to 17. Beginning on January 1, 1994, the age-related rates are: \$276 for children aged 4 and under; \$301 for children aged 5 to 11; \$344 for children aged 12 to 14; and \$361 for children aged 15 to 17. Beginning on January 1, 1995, the age-related rates are: \$282 for children aged 4 and under; \$307 for children aged 5 to 11; \$349 for children aged 12 to 14; and \$365 for children aged 15 to 17. In addition to these grants for basic maintenance, the department shall make supplemental payments for special needs, exceptional circumstances, care in a treatment foster home and initial clothing allowances according to rules promulgated by the department.

History: 1977 c. 354 s. 101; 1977 c. 418, 447; 1981 c. 20; 1985 a. 29 s. 3202 (23); 1985 a. 176, 281, 332, 403; 1989 a. 31, 336; 1993 a. 395 ss. 31m, 39; 1993 a. 437 s. 67; 1993 a. 446 ss. 79 to 82, 134m; 1993 a. 491; 1995 a. 275.

Foster child in family owned foster home under one year dispositional order is resident of household for insurance purposes. A. G. v. Travelers Ins. Co. 112 W (2d) 18, 331 NW (2d) 643 (Ct. App. 1983).

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

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

48.625 Licensing of group homes; fees. (1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the minimum requirements for a license established by the department under s. 48.67 and pay the license fee under sub. (2). A license issued under this subsection is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

(2) (a) Before the department may issue a license under sub. (1) to a group home, the group home must pay to the department a biennial fee of \$100, plus a biennial fee of \$15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to renew a license issued under sub. (1) shall pay the fee under this paragraph by the renewal date of the license. A new group home shall pay the fee under this paragraph no later than 30 days before the opening of the group home.

(b) A group home that wishes to renew a license issued under sub. (1) and that fails to pay the fee under par. (a) by the renewal date of the license or a new group home that fails to pay the fee under par. (a) by 30 days before the opening of the group home shall pay an additional fee of \$5 per day for every day after the deadline that the group home fails to pay the fee.

(2m) When the department issues a license to operate a group home, the department shall notify the clerk of the school district in which the group home is located that a group home has been licensed in the school district.

(3) This section does not apply to a foster home licensed under s. 48.62 (1) (a) in which care and maintenance is provided for more than 4 siblings.

History: 1977 c. 418; 1985 a. 281; 1991 a. 39; 1993 a. 395, 446; 1995 a. 27.

Cross-reference: See s. 48.66 for the department's licensing authority.

48.627 Foster, treatment foster and family-operated group home parent insurance and liability. (1) In this section, "family-operated group home" means a home licensed

under s. 48.625 for which the licensee is one or more individuals who operate not more than one group home.

(2) (a) Before the department, a county department or a licensed child welfare agency may issue or renew a foster home, treatment foster home or family–operated group home license, the licensing agency shall require the applicant to furnish proof satisfactory to the licensing agency that he or she has homeowner's or renter's liability insurance that provides coverage for negligent acts or omissions by children placed in a foster home, treatment foster home or family–operated group home that result in bodily injury or property damage to 3rd parties.

(b) A licensing agency may, in accordance with rules promulgated by the department, waive the requirement under par. (a) if the applicant shows that he or she is unable to obtain the required insurance, that he or she has had a homeowner's or renter's liability insurance policy canceled or that payment of the premium for the required insurance would cause undue financial hardship.

(c) The department shall conduct a study to determine the cost–effectiveness of purchasing insurance to provide standard homeowner's or renter's liability insurance coverage for applicants who are granted a waiver under par. (b). If the department determines that it would be cost–effective to purchase such insurance, it may purchase the insurance from the appropriations under s. 20.435 (3) (cf) and (pd).

(d) The licensing agency shall specify the amounts of liability insurance coverage required under par. (a).

(2c) The department shall determine the cost–effectiveness of purchasing private insurance that would provide coverage to foster, treatment foster and family–operated group home parents for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family–operated group home. If this private insurance is cost–effective and available, the department shall purchase the insurance from the appropriations under s. 20.435 (3) (cf) and (pd). If the insurance is unavailable, payment of claims for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family–operated group home shall be in accordance with subs. (2m) to (3).

(2m) Within the limits of the appropriations under s. 20.435 (3) (cf) and (pd), the department shall pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for bodily injury or property damage sustained by a licensed foster, treatment foster or family–operated group home parent or a member of the foster, treatment foster or family–operated group home parent's family as a result of the act of a child in the foster, treatment foster or family–operated group home parent's care.

(2s) Within the limits of the appropriations under s. 20.435 (3) (cf) and (pd), the department may pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for all of the following:

(a) Acts or omissions of the foster, treatment foster or family–operated group home parent that result in bodily injury to the child who is placed in the foster home, treatment foster home or family–operated group home or that form the basis for a civil action for damages by the foster child's parent against the foster, treatment foster or family–operated group home parent.

(b) Bodily injury or property damage caused by an act or omission of a child who is placed in the foster, treatment foster or family–operated group home parent's care for which the foster, treatment foster or family–operated group home parent becomes legally liable.

(3) (b) A claim under sub. (2m) shall be submitted to the department within 90 days after the bodily injury or property damage occurs. A claim under sub. (2s) shall be submitted within 90 days after a foster, treatment foster or family–operated group home parent learns that a legal action has been commenced against that parent. No claim may be paid under this subsection unless it is submitted within the time limits specified in this paragraph.

(c) The department shall review and approve in whole or in part or disapprove all claims received under this subsection during each 3–month period beginning with the period from July 1, 1985, to September 30, 1985.

(d) No claim may be approved in an amount exceeding the total amount available for paying claims under this subsection in the fiscal year during which the claim is submitted. No claim for property damage sustained by a foster, treatment foster or family–operated group home parent or a member of a foster, treatment foster or family–operated group home parent's family may be approved in an amount exceeding \$250,000.

(e) The department may not approve a claim unless the foster, treatment foster or family–operated group home parent submits with the claim evidence that is satisfactory to the department of the cause and value of the claim and evidence that insurance coverage is unavailable or inadequate to cover the claim. If insurance is available but inadequate, the department may approve a claim only for the amount of the value of the claim that it determines is in excess of the amount covered by insurance.

(f) If the total amount of the claims approved during any calendar quarter exceeds 25% of the total funds available during the fiscal year for purposes of this subsection plus any unencumbered funds remaining from the previous quarter, the department shall prorate the available funds among the claimants with approved claims. The department shall also prorate any unencumbered funds remaining in the appropriation under s. 20.435 (3) (cf) at the end of each fiscal year among the claimants whose claims were prorated during the fiscal year. Payment of a prorated amount from unencumbered funds remaining at the end of the fiscal year constitutes a complete payment of the claim for purposes of this program, but does not prohibit a foster parent or treatment foster parent from submitting a claim under s. 16.007 for the unpaid portion.

(g) A claimant whose claim is denied or whose payment is prorated is not entitled to a hearing under ch. 227 on the issue of the denial or proration.

(h) If a claim by a foster, treatment foster or family–operated group home parent or a member of the foster, treatment foster or family–operated group home parent's family is approved, the department shall deduct from the amount approved \$200 less any amount deducted by an insurance company from a payment for the same claim, except that a foster, treatment foster or family–operated group home parent and his or her family are subject to only one deductible for all claims filed in a fiscal year.

(i) The department may enter into a contract for the administration of this subsection.

(4) Except as provided in s. 895.485, the department is not liable for any act or omission by or affecting a child who is placed in a foster home, treatment foster home or family–operated group home, but shall, as provided in this section, pay claims described under sub. (2m) and may pay claims described under sub. (2s) or may purchase insurance to cover such claims as provided for under sub. (2c), within the limits of the appropriations under s. 20.435 (3) (cf) and (pd).

(5) The attorney general may represent a foster, treatment foster or family–operated group home parent in any civil action arising out of an act or omission of the foster, treatment foster or family–operated group home parent while acting in his or her capacity as a foster, treatment foster or family–operated group home parent.

History: 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 24, 29, 106, 154, 332, 336; 1987 a. 27, 377; 1989 a. 31; 1993 a. 446; 1995 a. 27.

Foster parents are not agents of the county for purposes of tort liability. *Kara B v. Dane County*, 198 W (2d) 24, 542 NW (2d) 777 (Ct. App. 1995).

48.63 Restrictions on placements. (1) Acting pursuant to court order or voluntary agreement, the child's parent or guardian or the department of health and family services, the department of corrections, a county department or a child welfare agency licensed to place children in foster homes or treatment fos-

ter homes may place a child or negotiate or act as intermediary for the placement of a child in a foster home, treatment foster home or group home. Voluntary agreements under this subsection may not be used for placements in facilities other than foster, treatment foster or group homes and may not be extended. A foster home or treatment foster home placement under a voluntary agreement may not exceed 6 months. A group home placement under a voluntary agreement may not exceed 15 days. These time limitations do not apply to placements made under s. 48.345, 938.183, 938.34 or 938.345. Voluntary agreements may be made only under this subsection and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent or by the child if the child's consent to the agreement is required. The child's consent to the agreement is required whenever the child is 12 years of age or older.

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

(3) Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under ss. 48.833, 48.835, 48.837 and 48.839.

(4) A permanency plan under s. 48.38 is required for each child placed in a foster home or treatment foster home under sub. (1). If the child is living in a foster home or treatment foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the placement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over and to the child's parent or guardian. If the agency which arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, the agency shall prepare a revised permanency plan and file that revised plan with the court prior to the date of the hearing on the proposed placement.

History: 1977 c. 354, 449; 1979 c. 300; 1981 c. 81; 1983 a. 351, 399; 1985 a. 176; 1989 a. 31, 107; 1993 a. 446; 1995 a. 27 ss. 2594, 9126 (19); 1995 a. 77.

48.64 Placement of children in foster homes, treatment foster homes and group homes. (1) DEFINITION. In this section, "agency" means the department of health and family services, the department of corrections, a county department or a licensed child welfare agency authorized to place children in foster homes or treatment foster homes.

(1m) FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME AGREEMENTS. If an agency places a child in a foster home or treatment foster home under a court order or voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home, treatment foster home or group home for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child shall not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires it. If the safety of the child requires earlier removal, s. 48.19 shall apply. If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

(1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a school-age child in a foster home or a group home, the agency shall notify the clerk of the school district in which the foster home or group home is located that a school-age child has been placed in a foster home or group home in the school district.

(2) SUPERVISION OF FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME PLACEMENTS. Every child in a foster home, treatment foster home or group home shall be under the supervision of an agency.

(4) ORDERS AFFECTING THE HEAD OF A HOME OR THE CHILDREN. (a) Any decision or order issued by an agency that affects the head of a foster, treatment foster or group home or the children involved may be appealed to the department under fair hearing procedures established under department rules. The department shall, upon receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this subsection, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. The department shall grant a continuance for a reasonable period of time when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an agency action being appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

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

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

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19).

Foster parents' rights were violated by department's failure to give mandatory written notice under (1), 1983 stats. [now (1m)] 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.

Foster parent is entitled to hearing under (4) (a) regarding interest as foster parent even where placement of child cannot be affected by hearing outcome. Bingenheimer v. DHSS, 129 W (2d) 100, 383 NW (2d) 898.

Sub. (4) (a) requires hearing where adoption agency removes child from adoptive placement within 6 months. Thelen v. DHSS, 143 W (2d) 574, 422 NW (2d) 146 (Ct. App. 1988).

While prospective adoptive parents have limited protected liberty interest in family unit during first six months of placement, interest does not require pre-re-

moval hearing. *Thelen v. Catholic Social Services*, 691 F Supp. 1179 (E.D. Wis. 1988).

Family liberty interest of foster parents. 1978 WLR 510.

SUBCHAPTER XV

DAY CARE PROVIDERS

48.65 Day care centers licensed; fees. (1) No person may for compensation provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day unless that person obtains a license to operate a day care center from the department. To obtain a license under this subsection to operate a day care center, a person must meet the minimum requirements for a license established by the department under s. 48.67 and pay the license fee under sub. (3). A license issued under this subsection is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

(1m) (a) In this subsection, “adult resident” means a person 18 years of age or over who lives at a day care center licensed under this section or contracted for under s. 120.13 (14) with the intent of making that day care center his or her home or who lives for more than 30 days cumulative in any 6-month period at a day care center licensed under this section or contracted for under s. 120.13 (14).

(b) 1. After receipt of an application for a license to operate a day care center or a referral from a school board under s. 120.13 (14), the department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of the applicant or person referred.

2. The department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of any person who, on July 1, 1996, is a day care provider licensed under this section or contracted for under s. 120.13 (14) or who, on July 1, 1996, has an application for licensure or a contract offer pending, within 6 months after July 1, 1996, or on the person's application for license or contract renewal, whichever is earlier.

3. Subject to subd. 2., the department of health and family services may, at the time of renewal of the license or contract of a day care provider licensed under this section or contracted for under s. 120.13 (14), or at any other time that the department considers to be appropriate, conduct, with the assistance of the department of justice, a background investigation of that day care provider.

(c) 1. After application for a license a day care center, with the assistance of the department of justice, shall conduct a background investigation of each employe and prospective employe of the applicant who has or would have regular contact with a child receiving care from the applicant and of each adult resident.

2. The department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of each adult resident of a person who, on July 1, 1996, is licensed under this section or contracted for under s. 120.13 (14) or who, on July 1, 1996, has an application for licensure or a contract offer pending, within 6 months after that date or on the person's application for license or contract renewal, whichever is earlier.

3. Subject to subd. 2., the department of health and family services may, at the time of renewal of the license or contract of a day care provider licensed under this section or contracted for under s. 120.13 (14) or at any other time that the department considers to be appropriate, conduct, with the assistance of the department of justice, a background investigation of any employe or prospective employe of the day care provider who has or would have regular contact with any child receiving day care from the day care provider or of any adult resident of the day care provider.

4. Except as provided in par. (f) 2., a day care provider that is licensed under this section or contracted for under s. 120.13 (14), with the assistance of the department of justice, shall conduct

a background investigation of the prospective employe or prospective adult resident unless that person has already been investigated under subd. 1., 2. or 3.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or if at any time within the 5 years preceding the date of the investigation that person has been a nonresident, or if the department of health and family services determines that the person's employment, certification or state court records provide a reasonable basis for further investigation, the department shall require the person to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the department of health and family services with all of the following information:

1. The person's name.
2. The person's social security number.
3. Other identifying information, including the person's birthdate, gender, race and any identifying physical characteristics.
4. Information regarding the conviction record of the person under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule promulgated under s. 48.67.

(f) 1. The department of health and family services may not license a person as a day care provider under this section and a school board may not contract with a person under s. 120.13 (14) until the department or school board receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. The department of health and family services may license a person as a day care provider under this section and a school board may contract with a person under s. 120.13 (14) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3. The department of health and family services may issue a probationary license and a school board may enter into a provisional contract pending receipt of the information required under this subdivision.

2. A day care provider that is licensed under this section or contracted for under s. 120.13 (14) may not employ a person in a position in which that person would have regular contact with a child receiving care from the day care provider or permit a person to be an adult resident until information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. A day care provider that is licensed under this section or contracted for under s. 120.13 (14) may employ a person or permit a person to be an adult resident conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3. A day care provider that is licensed under this section or contracted for under s. 120.13 (14) may provisionally employ a person in a position in which that person would have regular contact with a child receiving care from the day care provider or provisionally permit a person to be an adult resident if the day care provider states to the department of health and family services or school board that the employe or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the day care provider to care for the child. A day care provider may not finally employ a person in a position in which that person would have regular contact with the child for whom that provider is providing care unless the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3.

tion record under the laws of this state is satisfactory according to the criteria specified in par. (g) 1. to 3.

(g) The department of health and family services may not license a person to be a day care provider under this section, a school board may not contract with a person under s. 120.13 (14) and a day care provider licensed under this section or contracted with under s. 120.13 (14) may not employ a person in a position in which that person would have regular contact with a child receiving care from the day care provider or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 161 [ch. 961] that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 161 [ch. 961] that is punishable as a felony if committed in this state.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

2. The person has had imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64, 939.641 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the person would be subject to a penalty specified in any of those sections if convicted in this state.

3. The person has been convicted of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, if committed in this state, except that the department of health and family services may license a person to be a day care provider under this section, a school board may contract with a person under s. 120.13 (14) and a day care provider licensed under this section or contracted for under s. 120.13 (14) may employ or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31 or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31 or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(i) School boards and the department of health and family services shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation. Such information is not subject to inspection or copying under s. 19.35.

(j) The department of health and family services may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

(2) This section does not include any of the following:

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

(b) A public or parochial school.

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

(d) A county, city, village, town, school district or library that provides programs primarily intended for recreational or social purposes.

(3) (a) Before the department may issue a license under sub. (1) to a day care center that provides care and supervision for 4 to 8 children, the day care center must pay to the department a biennial fee of \$50. Before the department may issue a license under sub. (1) to a day care center that provides care and supervision for 9 or more children, the day care center must pay to the department a biennial fee of \$25, plus a biennial fee of \$7 per child, based on the number of children that the day care center is licensed to serve. A day care center that wishes to renew a license issued under sub. (1) shall pay the applicable fee under this paragraph by the renewal date of the license. A new day care center shall pay the applicable fee under this paragraph no later than 30 days before the opening of the day care center.

(b) A day care center that wishes to renew a license issued under par. (a) and that fails to pay the applicable fee under par. (a) by the renewal date of the license or a new day care center that fails to pay the applicable fee under par. (a) by 30 days before the opening of the day care center shall pay an additional fee of \$5 per day for every day after the deadline that the group home fails to pay the fee.

History: 1983 a. 193; 1985 a. 29; 1987 a. 399; 1991 a. 39; 1995 a. 27, 289.

Distinction created by (2) (b) between private parochial schools and other private schools is unconstitutional. *Milwaukee Montessori School v. Percy*, 473 F Supp. 1358 (1979).

48.651 Certification of day care providers. (1) Each county department shall certify, according to the standards adopted by the department under s. 46.03 (21), each day care provider reimbursed for child care services provided to families determined eligible under ss. 49.132 (2r) and (4) and 49.155 (1m), unless the provider is a day care center licensed under s. 48.65 or is established or contracted for under s. 120.13 (14). Each county may charge a fee to cover the costs of certification. The county shall certify the following categories of day care providers:

(a) Level I certified family day care providers, as established by the department under s. 46.03 (21). No county may certify a provider under this paragraph if the provider is a relative of all of the children for whom he or she provides care. The department may establish by rule other requirements for certification under this paragraph.

(b) Level II certified family day care providers, as established by the department under s. 46.03 (21). In establishing the requirements for certification under this paragraph, the department may not include a requirement for training for providers. The department may establish by rule requirements for certification under this paragraph.

(2) (a) In this subsection, "adult resident" means a person 18 years of age or over who lives at the home of a person who is a day care provider certified under this section with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6-month period at the home of a person who is a day care provider certified under this section.

(b) 1. Before initially certifying a Level I certified family day care provider under sub. (1) (a) or a Level II certified family day care provider under sub. (1) (b), the county department, with the assistance of the department of justice, shall conduct a background investigation of the certification applicant.

2. The county department, with the assistance of the department of justice, shall conduct a background investigation of any person who, on May 10, 1996, is a day care provider certified under this section or who, on May 10, 1996, has an application for certification pending, within 6 months after May 10, 1996, or on the person's application for renewal, whichever is earlier.

3. Subject to subd. 2., the county department may, at the time of renewal of the certification of a day care provider certified under this section, or at any other time that the county department considers to be appropriate, conduct, with the assistance of the department of justice, a background investigation of that day care provider.

(c) 1. Before initially certifying a Level I certified family day care provider under sub. (1) (a) or a Level II certified family day care provider under sub. (1) (b), the county department, with the assistance of the department of justice, shall, in addition to the investigation under par. (b), conduct a background investigation of all of the employes and prospective employes of the certification applicant who have or would have regular contact with a child receiving care from the day care provider and of each adult resident.

2. The county department, with the assistance of the department of justice, shall conduct a background investigation of each adult resident of a person who, on May 10, 1996, is certified under this section or who, on May 10, 1996, has an application for certification pending, within 6 months after that date or on the person's

application for renewal, whichever is earlier, and shall conduct a background investigation of all of the employes and prospective employes of that person who have or would have regular contact with any child receiving care from the day care provider.

3. Subject to subd. 2., the county department may, at the time of renewal of the certification of a day care provider certified under this section or at any other time that the county department considers to be appropriate, conduct, with the assistance of the department of justice, a background investigation of any employe or prospective employe of the day care provider who has or would have regular contact with any child receiving care from the day care provider or of any adult resident of the day care provider.

4. Before a day care provider that is certified under this section may employ any person in a position in which that person would have regular contact with a child receiving care from the day care provider or permit any person to be an adult resident, the county department, with the assistance of the department of justice, shall conduct a background investigation of the prospective employe or prospective adult resident unless that person has already been investigated under subd. 1., 2. or 3.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or if at any time within the 5 years preceding the date of the investigation that person has been a nonresident, or if the county department determines that the person's employment, certification or state court records provide a reasonable basis for further investigation, the county department shall require the person to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the county department with all of the following information:

1. The person's name.
2. The person's social security number.
3. Other identifying information, including the person's birthdate, gender, race and any identifying physical characteristics.
4. Information regarding the conviction record of the person under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule promulgated under s. 48.67.

(f) 1. A county department may not certify a person as a day care provider under this section until the county department receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. A county department may certify a person as a day care provider under this section conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3. A county department may grant provisional certification pending the receipt of the information required under this subdivision.

2. A day care provider that is certified under this section may not employ a person in a position in which that person would have regular contact with a child receiving care from the day care provider or permit a person to be an adult resident until the county department receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. and the county department so advises the day care provider. A day care provider that is certified under this section may employ a person in a position in which that person would have regular contact with a child receiving care from the day care provider or permit a person to be an adult resident conditioned on the receipt of

information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

(g) A county department may not certify a person to be a day care provider under this section and a day care provider certified under this section may not employ a person in a position in which that person would have regular contact with a child receiving care from the day care provider or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 161 [ch. 961] that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 161 [ch. 961] that is punishable as a felony if committed in this state.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

2. The person has had imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64, 939.641 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the person would be subject to a penalty specified in any of those sections if convicted in this state.

3. The person has been convicted of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, if committed in this state, except that the county department may certify a person to be a day care provider under this section and a day care provider certified under this section may employ or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31 or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31 or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(i) A county department shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation, except that the county department may disclose any information obtained under this subsection to any other county department conducting an investigation under this subsection. Such information is not subject to inspection or copying under s. 19.35.

(j) A county department may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

History: 1983 a. 193; 1985 a. 176; 1995 a. 289, 404.

48.653 Information for day care providers. The department shall provide each day care center licensed under s. 48.65 and each county agency providing child welfare services with a brochure containing information on basic child care and the licensing and certification requirements for day care providers. Each county agency shall provide each day care provider that it certifies with a copy of the brochure.

History: 1983 a. 193.

48.655 Parental access. A day care provider that holds a license under s. 48.65, that is certified under s. 48.651, that holds a probationary license under s. 48.69 or that is established or contracted for under s. 120.13 (14) shall permit any parent or guardian of a child enrolled in the program to visit and observe the program of child care at any time during the provider's hours of operation, unless the visit or observation is contrary to an existing court order.

History: 1991 a. 275; 1993 a. 16.

48.656 Parent's right to know. Every parent, guardian or legal custodian of a child who is receiving care and supervision, or of a child who is a prospective recipient of care and supervision, from a day care center that holds a license under s. 48.65 (1) or a

probationary license under s. 48.69 and that provides care and supervision for 9 or more children has the right to know certain information about the day care center that would aid the parent, guardian or legal custodian in assessing the quality of care and supervision provided by the day care center.

History: 1991 a. 275; 1993 a. 213, 375.

48.657 Day care center reports. (1) The department shall provide each day care center that holds a license under s. 48.65 (1) or a probationary license under s. 48.69 and that provides care and supervision for 9 or more children with an annual report that includes the following information:

(a) Violations of statutes, rules promulgated by the department under s. 48.67 or provisions of licensure under s. 48.70 (1) by the day care center. In providing information under this paragraph, the department may not disclose the identity of any employe of the day care center.

(b) A telephone number at the department that a person may call to complain of any alleged violation of a statute, rule promulgated by the department under s. 48.67 or provision of licensure under s. 48.70 (1) by the day care center.

(c) The results of the most recent inspection of the day care center under s. 48.73.

(2) A day care center shall post the report under sub. (1) next to the day care center's license or probationary license in a place where the report and the inspection results can be seen by parents, guardians or legal custodians during the day care center's hours of operation.

(2g) If the report under sub. (1) indicates that the day care center is in violation of a statute, a rule promulgated by the department under s. 48.67 or a provision of licensure under s. 48.70 (1), the day care center shall post with the report any notices received from the department relating to that violation.

(2r) Each day care center that receives a report under sub. (1) shall make available to a parent, guardian or legal custodian of a child who is receiving, or who is a prospective recipient of, care and supervision from the day care center the reports under sub. (1) from the previous 2 years and any notices received from the department relating to any violations identified in those reports. In providing information under this subsection, a day care center may withhold any information that would disclose the identity of an employe of the day care center.

(3) The department may require a day care center to provide to the department any information that is necessary for the department to prepare the report under sub. (1).

History: 1991 a. 275; 1993 a. 16, 375.

SUBCHAPTER XVI

LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, TREATMENT FOSTER HOMES, GROUP HOMES, DAY CARE CENTERS AND COUNTY DEPARTMENTS

48.66 Licensing duties of the department. (1) 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 or treatment foster homes, as provided by s. 48.62, and may license and supervise county departments in accordance with the procedures specified in this section and in ss. 48.67 to 48.74. The department of corrections may license a child welfare agency to operate a secured child caring institution, as defined in s. 938.02 (15g), for holding in secure custody children who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.34 (4d), (4h) or (4m) and referred to the child welfare agency by the court or the department of corrections and to provide supervision, care and maintenance for those children.

(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.

(4) 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.

(5) Licenses issued by the department under sub. (1) may be for any term not to exceed 2 years from the date of issuance. No license is transferable.

History: 1975 c. 307; 1977 c. 29, 271, 418, 447; 1979 c. 330; 1985 a. 176; 1993 a. 375 ss. 10, 12, 13; 1993 a. 377, 446, 491; 1995 a. 27, 77, 352.

48.67 Rules governing child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities and county departments. The department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities and county departments. These rules shall be designed to protect and promote the health, safety and welfare of the children in the care of all licensees. The department shall consult with the department of commerce and the department of education before promulgating these rules.

History: 1975 c. 307; 1977 c. 29, 205, 271, 418, 447; 1979 c. 300; 1985 a. 176; 1993 a. 375, 446; 1995 a. 27 ss. 2599, 9116 (4), 9145 (1).

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

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

(3) SUPPORT SERVICES. The department shall provide funds from the appropriations under s. 20.435 [(3) (ho) and] (6) (a) to enable foster parents and treatment foster parents to attend education programs approved under sub. (2) and shall promulgate rules concerning disbursement of the funds. Moneys disbursed under this subsection may be used for the following purposes:

NOTE: The bracketed language indicates a cross-reference to a provision which was repealed by 1995 Wis. Act 27. Corrective legislation is pending.

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

(b) Transportation to and from an education program.

(c) Course materials and fees.

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

History: 1977 c. 418; 1979 c. 34 s. 2102 (20) (a); 1983 a. 27 s. 2202 (20); 1985 a. 29, 176; 1989 a. 31, 107; 1993 a. 446.

48.68 Investigation of applicant; issuing of license. (1) After receipt of an application for a license, the department shall investigate to determine if the applicant meets the minimum requirements for a license adopted by the department under s.

48.67. In determining whether to issue a license, the department may consider any action by the applicant, or by an employe of the applicant, that constitutes a substantial failure by the applicant or employe to protect and promote the health, safety and welfare of a child. Upon satisfactory completion of this investigation and payment of the fee required under s. 48.615 (1) (a) or (b), 48.625 (2) (a), 48.65 (3) (a) or 938.22 (7) (b), the department shall issue a license under s. 48.66 (1) or, if applicable, a probationary license under s. 48.69. At the time of initial licensure and license renewal, the department shall provide a foster home licensee with written information relating to the age-related monthly foster care rates and supplemental payments specified in s. 48.62 (4), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

(2) Before 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 issued 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 issuing a license the department shall give full consideration to such hazards determined by the planning commission or agency.

(4) Prior to initial licensure of a residential facility operated by a child welfare agency or of a group home, the applicant for licensure shall make a good faith effort to establish a community advisory committee consisting of representatives from the child welfare agency or proposed group home, the neighborhood in which the proposed residential facility or group home will be located and a local unit of government. The community advisory committee shall provide a forum for communication for those persons interested in the proposed residential facility or group home. Any committee established under this subsection shall continue in existence after licensure to make recommendations to the licensee regarding the impact of the residential facility or group home on the neighborhood. The department shall determine compliance with this subsection both prior to and after initial licensure.

History: 1977 c. 205, 418; 1981 c. 72; 1991 a. 39; 1993 a. 375, 395, 491; 1995 a. 27, 77.

48.69 Probationary licenses. If any child welfare agency, shelter care facility, group home or day care center that has not been previously issued a license under s. 48.66 (1) applies for a license, meets the minimum requirements for a license established under s. 48.67 and pays the applicable fee referred to in s. 48.68 (1), the department shall issue a probationary license to that child welfare agency, shelter care facility, group home or day care center. A probationary license is valid for up to 6 months after the date of issuance unless renewed under this section or suspended or revoked under s. 48.715. Before a probationary license expires, the department shall inspect the child welfare agency, shelter care facility, group home or day care center holding the probationary license and, if the child welfare agency, shelter care facility, group home or day care center meets the minimum requirements for a license established under s. 48.67, the department shall issue a license under s. 48.66 (1). A probationary license issued under this section may be renewed for one 6-month period.

History: 1975 c. 307; 1977 c. 271; 1985 a. 176; 1993 a. 375.

48.70 Provisions of licenses. (1) GENERAL. Each license shall state the name of the person licensed, the premises included

under the license, the maximum number of children who can be received and their age and sex and such additional information and special conditions as the department may prescribe.

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

(4) **SPECIAL PROVISIONS FOR COUNTY DEPARTMENTS.** Licenses to county departments shall specify whether the county department may accept guardianship of children and place children for adoption.

History: 1973 c. 90; 1975 c. 307; 1977 c. 271; 1985 a. 176; 1993 a. 375, 446.

48.715 Sanctions and penalties. (1) In this section, “licensee” means a person who holds a license under s. 48.66 (1) or a probationary license under s. 48.69 to operate a child welfare agency, shelter care facility, group home or day care center.

(2) If the department provides written notice of the grounds for a sanction, an explanation of the types of sanctions that may be imposed under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

(a) That a person stop operating a child welfare agency, shelter care facility, group home or day care center if the child welfare agency, shelter care facility, group home or day care center is without a license in violation of s. 48.66 (1) or a probationary license in violation of s. 48.69.

(b) That a person who employs a person who has had a license under s. 48.66 (1) or a probationary license under s. 48.69 revoked within the previous 5 years terminate the employment of that person within 30 days after the date of the order. This paragraph includes employment of a person in any capacity, whether as an officer, director, agent or employe.

(c) That a licensee stop violating any provision of licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67.

(d) That a licensee submit a plan of correction for violation of any provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.67.

(e) That a licensee implement and comply with a plan of correction provided by the department or previously submitted by the licensee and approved by the department.

(f) That a licensee close the intake of any new children until all violations of the provisions of licensure under s. 48.70 (1) and the rules promulgated by the department under s. 48.67 are corrected.

(g) That a licensee provide training for the licensee’s staff members as specified by the department.

(3) If the department provides written notice of the grounds for a penalty, an explanation of the types of penalties that may be imposed under this subsection and an explanation of the process for appealing a penalty imposed under this subsection, the department may impose any of the following penalties against a licensee or any other person who violates a provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.67 or who fails to comply with an order issued under sub. (2) by the time specified in the order:

(a) A daily forfeiture amount per violation of not less than \$10 nor more than \$1,000. All of the following apply to a forfeiture under this paragraph:

1. Within the limits specified in this paragraph, the department may, by rule, set daily forfeiture amounts and payment deadlines based on the size and type of facility or agency and the seriousness of the violation. The department may set daily forfeiture amounts that increase periodically within the statutory limits if there is continued failure to comply with an order issued under sub. (2).

2. The department may directly assess a forfeiture imposed under this paragraph by specifying the amount of that forfeiture in the notice provided under this subsection.

3. A person against whom the department has assessed a forfeiture shall pay that forfeiture to the department within 10 days after receipt of notice of the assessment or, if that person contests that assessment under s. 48.72, within 10 days after receipt of the final decision after exhaustion of administrative review or, if that person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The department shall remit all forfeitures paid under this subdivision to the state treasurer for deposit in the school fund.

4. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this paragraph that has not been paid as provided in subd. 3. The only contestable issue in an action under this subdivision is whether or not the forfeiture has been paid.

(b) Suspension of the licensee's license for not more than 2 weeks.

(c) Refusal to renew a license or a probationary license.

(d) Revocation of a license or a probationary license as provided in sub. (4).

(4) If the department provides written notice of revocation and the grounds for revocation as provided in sub. (4m) and an explanation of the process for appealing a revocation under this subsection, the department may revoke a license issued under s. 48.66 (1) or a probationary license issued under s. 48.69 for any of the following reasons:

(a) The department has imposed a penalty on the licensee under sub. (3) and the licensee or a person under the supervision of the licensee either continues to violate or resumes violation of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section forming any part of the basis for the penalty.

(b) The licensee or a person under the supervision of the licensee has committed a substantial violation, as determined by the department, of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section.

(c) The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the child welfare agency, shelter care facility, group home or day care center that directly threatens the health, safety or welfare of any child under the care of the licensee.

(d) The licensee or a person under the supervision of the licensee has violated, as determined by the department, a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section that is the same as or similar to a rule promulgated under s. 48.67, a provision of licensure under s. 48.70 (1) or an order under this section that the licensee or a person under the supervision of the licensee has violated previously.

(4m) (a) For a revocation under sub. (4) (a) or (d), the department shall provide to the licensee written notice of the revocation and the grounds for revocation not less than 30 days before the date of the revocation. The revocation will take effect only if the violation on which the revocation is based remains substantially uncorrected at the end of the 30-day notice period.

(b) For revocations under sub. (4) (b) or (c), the department may revoke the license or probationary license immediately upon written notice to the licensee of the revocation and the grounds for revocation.

(5) The department may deny a license under s. 48.66 (1) or a probationary license under s. 48.69 to any person who has had a license under s. 48.66 (1) or a probationary license under s. 48.69 revoked within the previous 5 years.

History: 1991 a. 275; 1993 a. 375; 1995 a. 27.

48.72 Appeal procedure. Any person aggrieved by the department's refusal or failure to issue or renew a license or by any action taken by the department under s. 48.715 has the right to an administrative hearing provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227, the aggrieved person shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department's refusal or failure to issue or renew a license or the department's action taken under s. 48.715. The department shall hold an administrative hearing under s. 227.44 within 30 days after receipt of the request for the administrative hearing unless the aggrieved person consents to an extension of that time period. Judicial review of the department's decision may be had as provided in ch. 227.

History: 1991 a. 275; 1993 a. 375.

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

History: 1979 c. 300; 1993 a. 446.

48.735 Immunization requirements; day care centers. The department, after notice to a licensee, may suspend, revoke or refuse to renew a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of s. 252.04.

History: 1989 a. 120; 1993 a. 27.

48.737 Lead screening, inspection and reduction requirements; day care centers. The department, after notice to a day care provider certified under s. 48.651, or a day care center that holds a license under s. 48.65 or a probationary license under s. 48.69, may suspend, revoke or refuse to renew a license or certification in any case in which the department finds that there has been a substantial failure to comply with any rule promulgated under s. 254.162, 254.168 or 254.172.

History: 1993 a. 450, 491.

48.74 Authority of department to investigate alleged violations. Whenever the department is advised or has reason to believe that any person is violating any of the provisions of ss. 48.60, 48.62, 48.625 or 48.65, it shall make an investigation to determine the facts. For the purposes of this investigation, it shall have authority to inspect the premises where the violation is alleged to occur. If it finds that the person is violating any of the specified sections, it may either issue a license if the person is qualified or may institute a prosecution under s. 48.76.

History: 1979 c. 300.

48.745 Formal complaints regarding child welfare agencies and group homes. (1) If a complaint is received by a child welfare agency 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 department on forms supplied by the county department unless the county department designates the department to receive formal complaints. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the subunit of the department which licenses child welfare agencies and group homes.

(3) Upon receipt of a formal complaint, the county department may investigate the premises and records and question the

licensee, staff and residents of the 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; 1979 c. 175; 1985 a. 176.

48.75 Foster homes and treatment foster homes licensed by county departments and by child welfare agencies. (1) Child welfare agencies, if licensed to do so by the department, and county departments may license foster homes and treatment foster homes under the rules promulgated by the department under s. 48.67 governing the licensing of foster homes and treatment foster homes. A foster home or treatment foster home license shall be issued for a term not to exceed 2 years from the date of issuance, is not transferable and may be revoked by the child welfare agency or by the county department because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department promulgated pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license. The licensee shall be given written notice of any revocation and the grounds therefor.

(1g) (a) A county department may license a foster home only if the foster home is located in the county of the county department, except that a county department may license a foster home located in another county if any of the following applies:

1. The person who will be licensed to operate the foster home is a relative, as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a., or a guardian of the child who will be placed in the foster home.

2. A foster parent licensed by the county department moves to the other county with a child who has been placed in the foster parent's home and the license will allow the foster parent to continue to care for that child.

3. The county of the county department issuing the license and the county in which the foster home is located are contiguous.

4. The county of the county department issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833 or 48.837.

(b) A license issued under this subsection shall specifically identify each child to be placed in the foster home and shall terminate on the removal of all of those children from the foster home.

(c) No license may be issued under this subsection unless the county department issuing the license has notified the county department of the county in which the foster home will be located of its intent to issue the license and the 2 county departments have entered into a written agreement under this paragraph. A county department is not required to enter into any agreement under this paragraph allowing the county department of another county to license a foster home within its jurisdiction. The written agreement shall include all of the following:

1. A statement that the county department issuing the license is responsible for providing services to the child who is placed in the foster home, as specified in the agreement.

2. A statement that the county department issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

3. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

(d) If the county department issuing a license under this subsection violates the agreement under par. (c), the county department of the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, require the county department that issued the license to remove the child from the foster home within 30 days after receipt, by the county department that issued the license, of notification of the termination of the agreement.

(1r) At the time of initial licensure and license renewal, the child welfare agency or county department issuing a license under sub. (1) or (1g) shall provide the licensee with written information relating to the age-related monthly foster care rates and supplemental payments specified in s. 48.62 (4), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

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

History: 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 336; 1993 a. 395, 446; 1995 a. 225.

48.76 Penalties. In addition to the sanctions and penalties provided in s. 48.715, any person who violates s. 48.60, 48.62, 48.625, 48.63 or 48.65 may be fined not more than \$500 or imprisoned for not more than one year in county jail or both.

History: 1977 c. 418 s. 929 (18); 1979 c. 300; 1991 a. 275; 1993 a. 375.

48.77 Injunction against violations. In addition to the penalties provided in s. 48.76, the circuit courts shall have jurisdiction to prevent and restrain by injunction violations of s. 48.60, 48.62, 48.625, 48.63 or 48.65. It shall be the duty of the district attorneys, upon request of the department, to institute action for such injunction under ch. 813.

History: Sup. Ct. Order, 67 W (2d) 585, 773 (1975); 1977 c. 418 s. 929 (18); 1979 c. 300.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

48.78 Confidentiality of records. (1) In this section, unless otherwise qualified, "agency" means the department, a county department, a licensed child welfare agency, a licensed day care center or a licensed maternity hospital.

(2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d), 48.432, 48.433, 48.93 or 48.981 (7) or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian or child, unless the agency determines that inspection of those records by the child, parent, guardian or legal custodian would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person

named in the permission if the parent, guardian, legal custodian or child specifically identifies the record in the written permission, unless the agency determines that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare or law enforcement agency regarding an individual in the care or legal custody of one of the agencies.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.
3. Subject to an order under s. 48.366 and placed in a state prison under s. 48.366 (8).
4. On probation to the department of corrections under s. 973.09.
5. On parole under s. 302.11 or ch. 304.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352.

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 has authority and power:

- (4) To assist communities in setting up recreational commissions and to assist them in extending and broadening recreational programs so as to reach all children.
- (5) To assist in extending the local child care programs so as to reach all homes needing such help.
- (6) To assist in recruiting and training voluntary leaders for youth-serving organizations.

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

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

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

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

History: 1989 a. 31, 107; 1995 a. 27, 77.

48.80 Municipalities may sponsor activities. (1) Any municipality is hereby authorized and empowered to sponsor the establishment and operation of any committee, agency or council for the purpose of coordinating and supplementing the activities of public and private agencies devoted in whole or in part to the welfare of youth therein. Any municipality may appropriate, raise and expend funds for the purpose of establishing and of providing an executive staff to such committees, agencies or councils; may levy taxes and appropriate money for recreation and welfare projects; and may also receive and expend moneys from the state or federal government or private persons for such purposes.

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

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

SUBCHAPTER XIX

ADOPTION OF MINORS; GUARDIANSHIP

48.81 Who may be adopted. Any minor who meets all of the following criteria may be adopted:

(1) Except as provided under s. 48.839 (3) (b) or if an appointment of guardianship has been made under s. 48.831, a minor whose parental rights have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(2) A minor who is present within this state at the time the petition for adoption is filed.

History: 1987 a. 383; 1989 a. 161.

Sub. (1) prevents a birth parent's nonmarital partner from adopting the birth parent's child absent termination of the birth parent's parental rights. Except in the case of stepparent adoption, a child is not eligible for adoption unless the parental rights of both birth parents are terminated. This provision does not violate the constitutional rights of either the child or nonmarital partner. *Interest of Angel Lace M.* 184 W (2d) 492, 516 NW (2d) 678 (1994).

48.82 Who may adopt. (1) The following persons are eligible to adopt a minor if they are residents of this state:

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

(b) An unmarried adult.

(3) When practicable and if requested by the birth parent, the adoptive parents shall be of the same religious faith as the birth parents of the person to be adopted.

(4) No person may be denied the benefits of this subchapter because of a religious belief in the use of spiritual means through prayer for healing.

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

(6) No otherwise qualified person may be denied the benefits of this subchapter because of his or her race, color, ancestry or national origin.

History: 1981 c. 359 s. 16; 1983 a. 350; 1989 a. 161; 1991 a. 316.

Standing to object to adoption proceedings turns on the right to petition for adoption; grandparents excluded from petitioning under s. 48.90 (1) (a) had no standing

to object to the adoption of their grandchildren. Adoption of J.C.G. 177 W (2d) 424, 501 NW (2d) 908 (Ct. App. 1993).

48.83 Jurisdiction and venue. (1) The court of the county where the proposed adoptive parent or child resides, upon the filing of a petition for adoption or for the adoptive placement of a child, has jurisdiction over the child until the petition is withdrawn, denied or granted. Venue shall be in the county where the proposed adoptive parent or child resides at the time the petition is filed. The court may transfer the case to a court in the county in which the proposed adoptive parents reside.

(2) If the adoption is denied, jurisdiction over the child shall immediately revert to the court which appointed the guardian, unless the appointing court is a court of another state or foreign jurisdiction, in which case the court of the county where the child is shall have jurisdiction.

History: 1975 c. 39; 1977 c. 449 s. 497; 1981 c. 81, 391; 1989 a. 161.

48.831 Appointment of guardian for child without a living parent for adoptability finding. (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of a child who does not have a living parent if a finding as to the adoptability of a child is sought. Except as provided in s. 48.977, ch. 880 applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. An appointment of a guardian of the estate of a child who does not have a living parent shall be conducted in accordance with the procedures specified in ch. 880.

(1m) PETITION. Any of the following may file a petition for appointment of a guardian for a child who is believed to be in need of protection or services because he or she is without a living parent as described under s. 48.13 (1):

- (a) The department.
- (b) A county department.
- (c) A child welfare agency licensed under s. 48.61 (5) to accept guardianship.
- (d) A relative or family member of the child or a person whom the child has resided with and who has also acted as a parent of the child.
- (e) A guardian appointed under ch. 880 whose resignation as guardian has been accepted by a court under s. 880.17 (1).

(2) REPORT. If the department, county department or child welfare agency files a petition, it shall submit a report to the court containing as much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If the petition is filed by a relative or other person specified under sub. (1m) (d), the court shall order the department or a child welfare agency, if the department or agency consents, or a county department to file a report containing the information specified in this subsection. The department, county department or child welfare agency shall file the report at least 5 days before the date of the fact-finding hearing on the petition.

(3) FACT-FINDING HEARING. The court shall hold a fact-finding hearing on the petition, at which any party may present evidence relevant to the issue of whether the child has a living parent. If the court finds that the child has a living parent, the court shall dismiss the petition or grant the petitioner leave to amend the petition to a petition under s. 48.42 (1).

(4) DISPOSITIONAL HEARING. (a) If the court, at the conclusion of the fact-finding hearing, finds that the child has no living parent, the court shall proceed to a dispositional hearing. Any party may present evidence, including expert testimony, relevant to the issue of disposition. In determining the appropriate disposition, the court shall consider any factors under s. 48.426 (3) (a) to (d) that are applicable.

(b) If the court finds that adoption is in the child's best interest, the court shall order that the child be placed in the guardianship and custody of one of the following:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).

2. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

3. The department.

(c) If the court finds that adoption is not in the child's best interest, the court shall order that the child be placed in the guardianship of the department and place the child in the custody of a county department.

(d) Section 48.43 (5), (5m) and (7) applies to orders under pars. (b) and (c).

(e) The court shall order the custodian appointed under par. (b) or (c) to prepare a permanency plan under s. 48.38 for the child within 60 days after the date of the order. A permanency plan ordered under this paragraph is subject to review under s. 48.38 (5). In preparing a permanency plan, the department, county department or child welfare agency need not include any information specified in s. 48.38 (4) that relates to the child's parents or returning the child to his or her home. In reviewing a permanency plan, a court or panel need not make any determination under s. 48.38 (5) (c) that relates to the child's parents or returning the child to his or her home.

History: 1989 a. 161; 1995 a. 73, 275.

48.832 Transfer of guardianship upon revocation of guardian's license. If the department revokes the license of a county department licensed under s. 48.57 (1) (e) or (hm) to accept guardianship, or of a child welfare agency licensed under s. 48.61 (5) to accept guardianship, the department shall file a motion in the court that appointed the guardian for each child in the guardianship of the county department or agency, requesting that the court transfer guardianship and custody of the child. The motion may specify a county department or child welfare agency that has consented to accept guardianship of the child. The court shall transfer guardianship and custody of the child either to the county department or child welfare agency specified in the motion or to another county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5) which consents to the transfer. If no county department or child welfare agency consents, the court shall transfer guardianship and custody of the child to the department.

History: 1989 a. 161.

48.833 Placement of children for adoption by the department, county departments and child welfare agencies. The department, a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department under s. 48.57 (1) (e) or (hm) or the child welfare agency is the guardian of the child or makes the placement at the request of another agency which is the guardian of the child. Before placing a child for adoption under this section, the department, county department or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department or child welfare agency. When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department or child welfare agency making the placement shall enter into a written agreement with the adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the adoptive parent.

History: 1981 c. 81, 384; 1985 a. 176; 1989 a. 336; 1993 a. 446; 1995 a. 275.

48.835 Placement of children with relatives for adoption. (1) DEFINITION. In this section and s. 48.837, "custody" means physical custody of a child by the child's parent not in violation of a custody order issued by a court. "Custody" does not

include physical custody of a child during a period of physical placement with a parent who does not have legal custody of the child.

(2) **ADOPTIVE PLACEMENT.** A parent having custody of a child may place the child for adoption in the home of a relative without a court order.

(3) **PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED: EXCEPTION.** (a) If the child's parent has not filed a petition for the termination of parental rights under s. 48.42, the relative with whom the child is placed shall file a petition for the termination of the parents' rights at the same time the petition for adoption is filed, except as provided under par. (b).

(b) If the person filing the adoption petition is a stepparent with whom the child and the child's parent reside, the stepparent shall file only a petition to terminate the parental rights of the parent who does not have custody of the child.

(4) **HEARINGS.** Notwithstanding s. 48.90 (1) (a), the court may hold the hearing on the adoption petition immediately after entering the order to terminate parental rights under s. 48.427 (3).

History: 1981 c. 81; 1987 a. 355.

Concurrent TPR/adoption proceedings under 48.835 are subject to requirement under 48.422 that initial hearing be held within 30 days of filing petition. In re J.L.F. 168 (2d) 634, 484 NW (2d) 359 (Ct. App. 1992).

Grandparents excluded from petitioning under s. 48.90 (1) (a) had no standing under this section to object to the adoption of their grandchildren. Adoption of J.C.G. 177 W (2d) 424, 501 NW (2d) 908 (Ct. App. 1993).

48.837 Placement of children with nonrelatives for adoption. (1) **ADOPTIVE PLACEMENT.** A parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a person who is not a relative of the child if the home is licensed as a foster home or treatment foster home under s. 48.62.

(1m) **WRITTEN AGREEMENT.** Any agreement between the birth parent and adoptive parent that relates to the payment of any expenses described in sub. (2) (d) shall be in writing, with the amount and purpose of the expenses enumerated, and made part of the petition filed under sub. (2).

(2) **PETITION FOR PLACEMENT.** The petition for adoptive placement shall be verified and shall allege all of the following:

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

(b) The name, address and age of the birth parents and the proposed adoptive parents.

(c) The identity of any person or agency which solicited, negotiated or arranged the placement of the child with the proposed adoptive parents.

(d) A report of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or on their behalf in connection with the birth of the child, the placement of the child with the proposed adoptive parents, the medical or hospital care received by the child or by the child's mother in connection with the birth of the child and any other expenses, including the estimated legal expenses, of either the child's parent or the proposed adoptive parents. The report shall be itemized and shall show the services relating to the adoption or to the placement of the child for adoption which were received by the proposed adoptive parents, by either parent, by the child or by any other person to whom payment was made by or on behalf of the proposed adoptive parents. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any funds from the proposed adoptive parents in connection with the adoption or the placement of the child with them.

(3) **PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED.** The petition under sub. (2) shall be filed with a petition under s. 48.42 for the voluntary consent to the termination of any existing rights of the petitioning parent or parents.

(4) **RESPONSIBILITIES OF COURT.** On the filing of the petitions under this section the court:

(a) Notwithstanding s. 48.422 (1), shall schedule a hearing within 60 days of the date of filing, except that the hearing may not be held before the birth of the child.

(b) Shall appoint counsel or guardians ad litem when required under s. 48.23.

(c) Shall order the department or a county department under s. 48.57 (1) (e) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested and to report its recommendation to the court at least 5 days before the hearing on the petition. If a licensed child welfare agency has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the child welfare agency in place of the court-ordered report required under this paragraph.

(d) May, at the request of a petitioning parent, or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), order the department or a county department to place the child, pending the hearing on the petition, in any home licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents.

(e) Shall, before hearing the petitions under subs. (2) and (3), ascertain whether the child's paternity has been adjudicated in this state or another jurisdiction. If any person has filed a declaration of paternal interest under s. 48.025, the court shall determine the rights of that person. If the child's paternity has not been adjudicated and if no person has filed a declaration under s. 48.025, the court shall attempt to ascertain the paternity of the child. The court may not proceed with the hearing on the petitions under this section unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.

(5) **ATTENDANCE AT HEARING.** The child, if he or she is 12 years of age or over, and each petitioner shall attend the hearing on the petition under sub. (2). The child, if he or she is 12 years of age or over, and each parent having custody of the child shall attend the hearing on the petition under sub. (3). If the parent who has custody of the child consents and the court approves, the proposed adoptive parents may be present at the hearing on the petition under sub. (3). The court may, for good cause, waive the requirement that the child attend either of the hearings.

(6) **ORDER OF HEARINGS.** (a) The court shall hold the hearing on the petition under sub. (2) before the hearing on the petition required under sub. (3).

(b) At the beginning of the hearing held under sub. (2), the court shall review any agreement that is attached to the petition in accordance with sub. (1m). The court shall determine whether any conditions specified in the agreement are coercive to the birth parent. Making the payment of the birth parent's expenses that are permitted under s. 948.24 (1) (a) or (c) conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall do one of the following:

1. Dismiss the petitions under subs. (2) and (3).

2. Amend the agreement under sub. (1m) to delete any coercive conditions, if the parties agree to the amendment.

(c) After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4) (c) and make a conclusion as to whether placement in the home is in the best interest of the child.

(d) If the proposed placement is approved, the court shall proceed immediately to a hearing on the petition required under sub. (3). If the parental rights of the parent are terminated, the court shall order the child placed with the proposed adoptive parent or parents and appoint as guardian of the child the department, a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed to accept guardianship under s. 48.61 (5).

(7) **INVESTIGATION AND CARE COSTS.** The proposed adoptive parents shall pay the cost of any investigation ordered under sub. (4) (c), according to a fee schedule established by the department

based on ability to pay, and shall also, if the adoption is completed, pay the cost of any care provided for the child under sub. (4) (d).

(8) ATTORNEY REPRESENTATION. The same attorney may not represent the adoptive parents and the birth mother or birth father.

History: 1981 c. 81; 1985 a. 176; 1989 a. 161; 1993 a. 446.

Grandparents are not parties under this section. However, grandparent testimony may be necessary to determine the child's best interest. In *Interest of Brandon S.S.*, 179 W (2d) 114, 507 NW (2d) 94 (1993).

Adoption and termination proceedings in Wisconsin: A reply proposing limiting judicial discretion. Cooper and Nelson, 66 MLR 641 (1983).

48.838 Foreign adoption fees. (1) In this section, "foreign adoption" means the adoption of a child, who is a citizen of a foreign country, in accordance with any of the types of adoption procedures specified under this subchapter.

(2) The department may charge a fee of not more than \$75 to the adoptive parents for reviewing foreign adoption documents and for providing necessary certifications and approvals required by state and federal law.

(3) The department may also charge a fee of not more than \$75 to the adoptive parents for the review and certification of adoption documents, and for the provision of departmental approval of placements as specified in s. 48.97, for adoptions that occur in a foreign country.

History: 1989 a. 31.

48.839 Adoption of foreign children. (1) BOND REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction, before bringing the child into this state for the purpose of adopting the child, shall file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before he or she is adopted.

(b) By filing the bond required under par. (a), the child's guardian and the surety submit to the jurisdiction of the court in the county in which the guardian resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served. Their liability on the bond may be enforced without the commencement of an independent action.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the guardian and the surety to show cause why judgment on the bond should not be entered for the department. If neither the guardian nor the surety appear for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the guardian and the surety.

(d) If custody of the child is transferred under sub. (4) (b) to a county department or child welfare agency before the child is adopted, the department shall periodically bill the guardian and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond against the guardian and surety.

(e) This section does not preclude the department or any other agency given custody of a child under sub. (4) (b) from collecting under s. 46.03 (18) (b) or 46.10 from the former guardian for costs in excess of the amount recovered under the bond incurred in enforcing the bond and providing care and maintenance for the child until he or she reaches age 18 or is adopted.

(f) The department may waive the bond requirement under this subsection.

(2) EVIDENCE OF AVAILABILITY FOR ADOPTION REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction and who intends to bring the child into this state for

the purpose of adopting the child shall file with the department a certified copy of the judgment or order of a court of the foreign jurisdiction or other instrument having the effect under the laws of the foreign jurisdiction of freeing the child for adoption. If the instrument is not a judgment or order of a court, the guardian shall also file with the department a copy of the law under which the instrument was issued, unless the department waives this requirement. The guardian shall also file English translations of the court judgment or order or other instrument and of the law. The department shall return the originals to the guardian and keep on file a copy of each document.

(b) If the guardian files a judgment or order of a court under par. (a), the department shall review the judgment or order. If the department determines that the judgment or order has the effect of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the guardian as an adoptive parent, if a licensed child welfare agency has been identified to provide the services required under sub. (5) and if the guardian has filed the bond required under sub. (1), the department shall certify to the U.S. immigration and naturalization service that all preadoptive requirements of this state that can be met before the child's arrival in the United States have been met.

(c) If the guardian files an instrument other than a judgment or order of a court under par. (a), the department shall review the instrument. If the department determines that the instrument has the effect under the laws of the foreign jurisdiction of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the adoptive parents, if a licensed child welfare agency has been identified to provide the services required under sub. (5) and if the guardian has filed the bond required under sub. (1), the department shall certify to the U.S. immigration and naturalization service that all preadoptive requirements of this state that can be met prior to the child's arrival in the United States have been met.

(3) PETITION FOR ADOPTION OR TERMINATION OF PARENTAL RIGHTS REQUIRED. (a) Within 60 days after the arrival of a child brought into this state from a foreign jurisdiction for the purpose of adoption, the individual who is the child's guardian shall file a petition to adopt the child, a petition to terminate parental rights to the child, or both. If only a petition to terminate parental rights to the child is filed under this paragraph, the individual guardian shall file a petition for adoption within 60 days of the order terminating parental rights. The individual guardian shall file with the court the documents filed with the department under sub. (2) (a).

(b) Except as provided in par. (a) and sub. (4) (a), the termination of a parent's parental rights to a child who is a citizen of a foreign jurisdiction is not required prior to the child's adoption by his or her guardian.

(c) If a petition for adoption is filed under par. (a), the individual guardian filing the petition shall file a copy of the petition with the department at the time the petition is filed with the court. If the individual guardian filed an instrument other than a court order or judgment under sub. (2) (a), the department may make a recommendation to the court as to whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption.

(d) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed an instrument other than a court order or judgment under sub. (2) (a), the court shall determine whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption. The court shall presume that the instrument has that effect unless there are substantial irregularities on the face of the document or unless the department shows good cause for believing that the instrument does not have that effect. If the court determines that the instrument does not have the effect of freeing the child for adoption, the court shall order the petitioner to file a petition to terminate parental rights under s. 48.42 within 10 days.

(e) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed a court order or judgment under sub. (2) (a), the court order or judgment shall be legally sufficient evidence that the child is free for adoption.

(4) TRANSFER OF GUARDIANSHIP; FORFEITURE OF BOND. If a guardian does not file a petition as required under sub. (3) (a) or (d), or if the petition for adoption under sub. (3) is withdrawn or denied, the court:

(a) Shall transfer guardianship of the child to the department, to a county department under s. 48.57 (1) (e) or (hm) or to a child welfare agency under s. 48.61 (5) and order the guardian to file a petition for termination of parental rights under s. 48.42 within 10 days.

(b) Shall transfer legal custody of the child to a county department or a child welfare agency licensed under s. 48.60.

(c) Shall order the guardian who filed the bond under sub. (1) (a) to show cause why the bond should not be forfeited.

(d) May order that physical custody of the child remain with a suitable individual with whom the child has been living.

(5) CHILD WELFARE SERVICES REQUIRED. Any child welfare agency licensed under s. 48.60 that negotiates or arranges the placement of a child for adoption under this section shall provide services to the child and to the proposed adoptive parents until the child's adoption is final.

History: 1981 c. 81; 1985 a. 176.

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

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

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

(2) The guardian's recommendation shall be presumed to be in the best interests of the child unless the fair preponderance of the credible evidence is to the contrary. If the guardian's recommendation is in opposition to the granting of the petition, the court shall take testimony as to whether or not the proposed adoption is in the best interests of the child.

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

History: 1973 c. 263.

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

48.88 Notice of hearing; investigation. (1) In this section, unless otherwise qualified, "agency" means any public or private entity except an individual.

(1m) Upon the filing of a petition for adoption, the court shall schedule a hearing within 90 days of the filing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any, to the agency making the investigation under sub. (2), to the

department when its recommendation is required by s. 48.89 and to the child if the child is 12 years of age or over.

(2) (a) Except as provided under par. (c), when a petition to adopt a child is filed, the court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. The court shall order one of the following to conduct the investigation:

1. If an agency has guardianship of the child, the guardianship agency, unless the agency has already filed its recommendation under s. 48.85 and has filed with the recommendation a report of an investigation as required under this paragraph.

2. If no agency has guardianship of the child and a relative other than a stepparent has filed the petition for adoption, the department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency.

4. If the child is a citizen of a foreign jurisdiction and is under the guardianship of an individual, the agency which conducted the home study required under federal law prior to the child's entry into the United States.

(b) The agency making the investigation shall file its report with the court at least 10 days before the hearing unless the time is reduced for good cause shown by the petitioner. The report shall be part of the record of the proceedings.

(c) If a stepparent has filed a petition for adoption and no agency has guardianship of the child, the court shall order a county department or, with the consent of the department or a licensed child welfare agency, order the department or the child welfare agency to conduct a screening, consisting of no more than one interview with the petitioner and a check of the petitioner's background through public records, including records maintained by the department or any county department under s. 48.981. The department, county department or child welfare agency that conducts the screening shall file a report of the screening with the court within 30 days. After reviewing the report, the court may proceed to act on the petition, may order the county department to conduct an investigation as described under par. (a) (intro.) or may order the department or a licensed child welfare agency to make the investigation if the department or child welfare agency consents.

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

History: 1975 c. 39, 199, 307; 1977 c. 271; 1981 c. 81, 384; 1983 a. 190; 1985 a. 176.

48.89 Recommendation of the department. (1) The recommendation of the department is required for the adoption of a child if the child is not under the guardianship of a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5).

(2) The department shall make its recommendation to the court at least 10 days before the hearing unless the time is extended by the court. The recommendation shall be part of the record of the proceedings.

(3) The recommendation of the department shall not be required if the recommendation of the department, a licensed child welfare agency or a county department under s. 48.57 (1) (e) or (hm) is required by s. 48.841, if a report of an investigation by the department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency is required by s. 48.88 (2) (a) 2. or if one of the petitioners is a relative of the child.

History: 1973 c. 263; 1977 c. 271; 1981 c. 81; 1983 a. 447; 1985 a. 176; 1995 a. 443.

48.90 Filing of adoption petition; preadoption residence. (1) A petition for adoption may be filed at any time if:

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

(b) The petitioner is the child's stepparent.

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

(d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

(2) Except as provided under sub. (1), no petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months or more.

(3) No petition for adoption may be filed unless the petitioners have complied with all applicable provisions of this chapter relating to adoptive placements.

History: 1973 c. 263; 1977 c. 354; 1977 c. 418 s. 929 (18); 1981 c. 81.

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.

Standing to object to adoption proceedings turns on the right to petition for adoption; grandparents excluded from petitioning under sub. (1) (a) had no standing to object to the adoption of their grandchildren. *Adoption of J.C.G.* 177 W (2d) 424, 501 NW (2d) 908 (Ct. App. 1993).

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

(2) In an adoption proceeding for a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, the court shall establish whether the rights of any persons who have filed declarations of paternal interest under s. 48.025 have been determined or whether paternity has been adjudicated in this state or in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed, prior to any action on the petition for adoption, to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration under s. 48.025.

(3) If after the hearing and a study of the report required by s. 48.88 and the recommendation required by s. 48.841 or 48.89, the court is satisfied that the necessary consents or recommendations have been filed and that the adoption is in the best interests of the child, the court shall make an order granting the adoption. The order may change the name of the minor to that requested by petitioners.

History: 1973 c. 263; 1979 c. 330; 1981 c. 81; 1983 a. 447; 1987 a. 383; 1995 a. 443.

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

48.915 Adoption appeals given preference. An appeal from a judgment granting or denying an adoption shall be given preference.

History: 1987 a. 383; 1993 a. 395 s. 30; Stats. 1993 s. 48.915.

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

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and the adoptive person's birth parents, unless the birth parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist. Notwithstanding the extinction of all parental rights under this subsection, a court may order reasonable visitation under s. 48.925.

(3) Rights of inheritance by, from and through an adopted child are governed by 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; 1981 c. 359 s. 16; 1991 a. 191, 316.

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.

See note to 767.245, citing *In re Marriage of Soergel*, 154 W (2d) 564, 453 NW (2d) 624 (1990).

Adoption of child of deceased parent does not terminate deceased parent's parents' grandparental visitation rights under 880.115. *Grandparental Visitation of C.G.F.*, 168 W (2d) 62, 483 NW (2d) 803 (1992).

Except in the case of stepparent adoption, the parental rights of both birth parents are terminated, effectively preventing a birth parent's nonmarital partner from adopting the birth parent's child. This provision does not violate the constitutional rights of either the child or nonmarital partner. *Interest of Angel Lace M.* 184 W (2d) 492, 516 NW (2d) 678 (1994).

48.925 Visitation rights of certain persons. (1) Upon petition by a relative who has maintained a relationship similar to a parent-child relationship with a child who has been adopted by a stepparent or relative, the court may grant reasonable visitation rights to that person if the petitioner has maintained such a relationship within 2 years prior to the filing of the petition, if the adoptive parent or parents, or, if a birth parent is the spouse of an adoptive parent, the adoptive parent and birth parent, have notice of the hearing and if the court determines all of the following:

(a) That visitation is in the best interest of the child.

(b) That the petitioner will not undermine the adoptive parent's or parents' relationship with the child or, if a birth parent is the spouse of an adoptive parent, the adoptive parent's and birth parent's relationship with the child.

(c) That the petitioner will not act in a manner that is contrary to parenting decisions that are related to the child's physical, emotional, educational or spiritual welfare and that are made by the adoptive parent or parents or, if a birth parent is the spouse of an adoptive parent, by the adoptive parent and birth parent.

(2) Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the adopted child.

(3) This section applies to every child in this state who has been adopted, by a stepparent or relative, regardless of the date of the adoption.

(4) Any person who interferes with visitation rights granted under sub. (1) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.

History: 1991 a. 191.

Grandparents' Visitation Rights Following Adoption: Expanding Traditional Boundaries in Wisconsin. Hintz. 1994 WLR 484.

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

48.93 Records closed. (1) In this section, "adoptee" has the meaning given in s. 48.432 (1) (a).

(1d) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file and may not be disclosed except under sub. (1g) or (1r), s. 46.03 (29), 48.432, 48.433 or 48.57 (1) (j), or by order of the court for good cause shown.

(1g) At the time a court enters an order granting an adoption, it shall provide the adoptive parents with a copy of the child's medical record under s. 48.425 (1) (am) or with any information provided to the court under s. 48.422 (9) or 48.425 (2), after deleting the names and addresses of the child's birth parents and the identity of any provider of health care to the child or the child's birth parents.

(1r) Any agency which has placed a child for adoption shall, at the request of an adoptive parent or of the adoptee, after he or she has reached age 18, provide the requester without charge, except for the actual cost of reproduction, with medical or genetic information about the adoptee or about the adoptee's birth parents which it has on file and with nonidentifying social history information about the adoptee's family which it has on file, after delet-

ing the names and addresses of the birth parents and any provider of health care to the adoptee or the adoptee's birth parents. The agency may charge a requester a fee for the cost of verifying, purging, summarizing, copying and mailing the information according to the fee schedule established by the department under s. 48.432 (3) (c). The fee may not be more than \$150 and may be waived by the agency.

(2) All correspondence and papers, relating to the investigation, which are not a part of the court record, except those in the custody of agencies authorized to place children for adoption shall be transferred to the department and placed in its closed files.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471; 1989 a. 31.

Adoption records reform: Impact on adoptees. 67 MLR 110 (1983).

48.94 New birth certificate. After entry of the order granting the adoption the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the new birth certificate. Whenever the parents by adoption, or the adopting parent and a birth parent who is the spouse of the adopting parent, request, that the birth certificate for the person adopted be not changed, then the court shall so order. In such event no new birth certificate shall be filed by the state registrar of vital statistics, notwithstanding the provisions of s. 69.15 (2) or any other law of this state.

History: 1981 c. 359 s. 16; 1985 a. 315 s. 22; 1991 a. 316.

48.95 Withdrawal or denial of petition. Except as provided under s. 48.839 (3) (b), if the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter and ch. 938 for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the department, a licensed child welfare agency or a county department under s. 48.57 (1) (e) or (hm), the minor shall remain in the legal custody of the guardian.

History: 1977 c. 271, 449; 1981 c. 81; 1985 a. 176; 1995 a. 77.

48.96 Subsequent adoption. The adoption of an adopted person is authorized and, in that case, the references to parent and birth parent are to adoptive parent.

History: 1981 c. 359 s. 16.

48.97 Adoption orders of other jurisdictions. When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the department has approved the placement. A child whose adoption would otherwise be valid under this section may be readopted in accordance with this chapter.

History: 1971 c. 187; 1981 c. 81; 1995 a. 443.

48.975 Adoption assistance. (1) DEFINITION. In this section, "adoption assistance" means payments by the department to the adoptive or proposed adoptive parents of a child which are designed to assist in the cost of care of that child after an agreement under sub. (4) has been signed and the child has been placed for adoption with the adoptive or proposed adoptive parents.

(2) **APPLICABILITY.** The department may provide adoption assistance only when it has determined that such assistance is necessary to assure the child's adoption.

(3) **TYPES.** The department may provide adoption assistance for maintenance, medical care or nonrecurring adoption expenses, or for any combination of those types of adoption assistance, according to the following criteria:

(a) **Maintenance.** For support of a child who was in foster care or treatment foster care immediately prior to adoption, the adoption assistance for maintenance shall be equivalent to the amount of that child's foster care or treatment foster care payment. For support of a child not in foster care or treatment foster care imme-

diately prior to placement with a subsidy, the adoption assistance for maintenance shall be equivalent to the uniform foster care rate.

(b) **Medical.** The adoption assistance for medical care shall be sufficient to pay expenses due to a physical, mental or emotional condition of the child which is not covered by a health insurance policy insuring the child or the parent.

(c) **Nonrecurring adoption expenses.** Subject to any maximum amount provided by the department by rule promulgated under sub. (5), the adoption assistance for nonrecurring adoption expenses shall be sufficient to pay the reasonable and necessary adoption fees, court costs, legal fees and other expenses that are directly related to the adoption of the child and that are not incurred in violation of any state or federal law.

(4) **PROCEDURE.** A written agreement to provide adoption assistance 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 or for children in the guardianship of an American Indian tribal agency in this state. The adoption assistance 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; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446.

48.977 Appointment of relatives as guardians for certain children in need of protection or services. (1) DEFINITION. In this section, "relative" means a relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a.

(2) **TYPE OF GUARDIANSHIP.** This section may be used for the appointment of a relative of a child as a guardian of the person for the child if the court finds all of the following:

(a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 for a cumulative total period of one year or longer.

(b) That the person nominated as the guardian of the child is a relative of the child with whom the child has been placed and that it is likely that the child will continue to be placed with that relative for an extended period of time or until the child attains the age of 18 years.

(c) That, if appointed, it is likely that the relative would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.

(e) That the child's parent is neglecting, refusing or unable to carry out the duties of a guardian or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian.

(f) That the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home but that reunification of the child with the child's parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child.

(3) **DESIGNATION AS A PERMANENT PLACEMENT.** If a court appoints a guardian for a child under sub. (2), the court may designate the child's placement with that guardian as the child's permanent foster placement, but only for purposes of s. 48.368 (2).

(4) **PROCEDURE AND DISPOSITION.** (a) *Who may file petition.* Any of the following persons may file a petition for the appointment of a guardian for a child under sub. (2):

1. The child or the child's guardian or legal custodian.
2. The child's guardian ad litem.
3. The child's parent.

4. The relative with whom the child is placed if the relative is nominated as the guardian of the child in the petition.
5. The department.
6. A county department.
7. A licensed child welfare agency that has been assigned primary responsibility for providing services to the child under a court order.
8. The person representing the interests of the public under s. 48.09.

(b) *Contents of petition.* A proceeding for the appointment of a guardian for a child under sub. (2) shall be initiated by a petition which shall be entitled "In the interest of (child's name), a person under the age of 18" and shall set forth all of the following with specificity:

1. The name, birth date and address of the child.
2. The names and addresses of the child's parent or parents, guardian and legal custodian.
3. The date the child was adjudged in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and the dates that the child has been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365.
4. A statement of the facts and circumstances which the petition alleges establish that the conditions specified in sub. (2) (b) to (f) are met.
5. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.
6. A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (cm) to be served upon all of the following persons:

- a. The child if the child is 12 years of age or older.
- b. The child's guardian and legal custodian.
- c. The child's guardian ad litem.
- d. The child's counsel.
- e. The child's parent.
- f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.
- g. The relative with whom the child is placed if the relative is nominated as the guardian of the child in the petition.
- h. The person representing the interests of the public under s. 48.09.
- i. The agency primarily responsible for providing services to the child under a court order.

2. Service shall be made by 1st class mail at least 7 days before the hearing or by personal service at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or personal service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party.

(cm) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date which allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition. Before accepting a plea of no contest to the allegations in the petition, the court shall do all of the following:

- a. Address the parties present and determine that the plea is made voluntarily and with understanding of the nature of the facts

alleged in the petition, the nature of the potential disposition and the nature of the legal consequences of that disposition.

b. Establish whether any promises or threats were made to elicit the plea of no contest and alert all unrepresented parties to the possibility that an attorney may discover grounds to contest the petition that would not be apparent to those parties.

c. Make inquiries to establish to the satisfaction of the court that there is a factual basis for the plea of no contest.

2. If the petition is not contested and if the court accepts the plea of no contest, the court may immediately proceed to a dispositional hearing under par. (f) [(fm)], unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

3. If the petition is contested or if the court does not accept the plea of no contest, the court shall set a date for a fact-finding hearing under par. (d) which allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(d) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the petition on the date set by the court under par. (cm) 3., at which any party may present evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f) have been met. If the court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to (f) have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the fact-finding hearing.

(e) *Court report.* The court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court a report containing the written summary under s. 48.38 (5) (e) and as much information relating to the appointment of a guardian as is reasonably ascertainable. The agency shall file the report at least 48 hours before the date of the dispositional hearing under par. (f) [par. (fm)].

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(fm) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified or set by the court under par. (cm) 2. or (d), at which any party may present evidence, including expert testimony, relevant to the disposition.

(g) *Dispositional factors.* In determining the appropriate disposition under this section, the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider any report submitted under par. (e) and shall consider, but not be limited to, all of the following:

1. Whether the relative would be a suitable guardian of the child.
2. The willingness and ability of the relative to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.
3. The wishes of the child.

(h) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the relative as the child's guardian is not in the best interests of the child.

2. A disposition ordering that the relative with whom the child has been placed be appointed as the child's guardian under sub. (5) (a) or limited guardian under sub. (5) (b), if the court determines that such an appointment is in the best interests of the child.

(i) *Effect of disposition on permanency plan review process.* After a disposition under par. (h), the child's permanency plan shall continue to be reviewed under s. 48.38 (5), if applicable.

(5) DUTIES AND AUTHORITY OF GUARDIAN. (a) *Full guardianship.* Unless limited under par. (b), a guardian appointed under sub. (2) shall have all of the duties and authority specified in s. 48.023.

(b) *Limited guardianship.* The court may order that the duties and authority of a guardian appointed under sub. (2) be limited. The duties and authority of a limited guardian shall be as specified by the order of appointment under sub. (4) (h) 2. or any revised order under sub. (6). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian appointed under sub. (2) to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

(6) REVISION OF GUARDIANSHIP ORDER. (a) Any person authorized to file a petition under sub. (4) (a) may request a revision in a guardianship order entered under this subsection or sub. (4) (h) 2., or the court may, on its own motion, propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the court's disposition.

(b) The court shall hold a hearing on the matter prior to any revision of the guardianship order if the request or court proposal indicates that new information is available which affects the advisability of the court's guardianship order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

(c) If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or proposal shall be attached to the notice. The court may order a revision if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and if the court determines that a revision would be in the best interests of the child.

(7) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* Unless the court order entered under sub. (4) (h) 2. or (6) specifies that a guardianship under this section be for a lesser period of time, a guardianship under this section shall continue until the child attains the age of 18 years or until terminated by the court, whichever occurs earlier.

(b) *Removal for cause.* 1. Any person authorized to file a petition under sub. (4) (a) may request that a guardian appointed under sub. (2) be removed for cause or the court may, on its own motion, propose such a removal. The request or court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the court's disposition.

2. The court shall hold a hearing on the matter unless written waivers of objections to the removal are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or court proposal shall be attached to the notice. The court shall remove the guardian for cause if, at the hearing, the court finds that it has been proved by clear and convincing evidence that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust

and if the court determines that removal of the guardian would be in the best interests of the child.

(c) *Resignation.* A guardian appointed under sub. (2) may resign at any time if the resignation is accepted by the court.

(d) *Termination on request of parent.* 1. A parent of the child may request that a guardianship order entered under sub. (4) (h) 2. or a revised order entered under sub. (6) be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child.

2. The court shall hold a hearing on the matter unless written waivers of objections to the termination are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request shall be attached to the notice. The court shall terminate the guardianship if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and the parent is willing and able to carry out the duties of a guardian and if the court determines that termination of the guardianship would be in the best interests of the child.

(e) *Termination on termination of parental rights.* If a court enters an order under s. 48.427 (3p) or 48.428 (2) (b), the court shall terminate the guardianship under this section.

(8) RELATIONSHIP TO CH. 880. (a) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(b) Nothing in this section prohibits an individual from petitioning a court under ch. 880 for appointment of a guardian.

History: 1995 a. 275.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

48.98 Interstate placement of children. (1) No person may bring a child into this state or send a child out of this state for the purpose of placing the child in foster care or treatment foster care or for the purpose of adoption without a certificate from the department that the home is suitable for the child.

(2) (a) Any person, except a county department or licensed child welfare agency, who brings a child into this state for the purpose of placing the child in a foster home or treatment foster home shall, before the child's arrival in this state, file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before the child reaches age 18 or is adopted.

(b) By filing the bond required under par. (a), the person filing the bond and the surety submit to the jurisdiction of the court in the county in which the person resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the person who filed the bond and the surety to show cause why judgment on the bond should not be entered for the department. If neither the person nor the surety appears for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the person who filed the bond and the surety.

(d) The department shall periodically bill the person who filed the bond and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond.

(e) The department may waive the bond requirement under par. (a).

(3) The person bringing or sending the child into or out of this state shall report to the department, at least once each year and at any other time required by the department, concerning the location and well-being of the child, until the child is 18 years of age or is adopted.

(4) (a) This section applies only to interstate placements of children which are not governed by s. 48.988.

(b) Section 48.839 governs the placement of children who are not U.S. citizens and not under agency guardianship who are brought into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may promulgate all rules necessary for the enforcement of this section.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1981 c. 81; 1985 a. 176; 1985 a. 332 s. 251 (5); 1993 a. 446.

48.981 Abused or neglected children. (1) DEFINITIONS. In this section:

(am) “Caregiver” means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child’s parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother or half sister.
2. The child’s guardian.
3. The child’s legal custodian.
4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.
5. An employe of a residential facility or child caring institution in which the child was or is placed.
6. A person who provides or has provided care for the child in or outside of the child’s home.
7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.
8. Any relative of the child other than a relative specified in subd. 1.

(cs) “Indian child” means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(d) “Neglect” means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(f) “Record” means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) “Relative” means a parent, grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle or steppaunt.

(g) “Reporter” means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) “Subject” means a person named in a report or record as either of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child.

(i) “Tribal agent” means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) **PERSONS REQUIRED TO REPORT.** A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d), school teacher, administrator or counselor, mediator under s. 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, dietitian, speech-language pathologist, audiologist, emergency medical technician 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 or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3). Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

(2m) **EXCEPTION TO REPORTING REQUIREMENT.** (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. “Health care provider” means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. “Health care service” means family planning services, pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) **REPORTS; INVESTIGATION.** (a) *Referral of report.* A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or the sheriff or city, village or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county department all cases reported to it. The county department may require that a subsequent report be made in writing. Each county department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that a 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 the investigating officer has reason under s. 48.19 (1) (c) or (d) 5. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

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.

(bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Winnebago tribe, if a county department which receives a report under par. (a) pertaining to a child knows that he or she is an Indian child who resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child and the fact that a report has been received about that child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated or the child is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Winnebago service area where the child resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Winnebago service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the county department or licensed child welfare agency under contract with the county department shall, in accordance with the authority granted to the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations. If the investigation is of a report of abuse or neglect or threatened abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the inves-

tigation is of a report of abuse or neglect or threatened abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the county department or licensed child welfare agency involved to the child's parents, guardian or legal custodian. The county department or licensed child welfare agency under contract with the county department may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an employe of the county department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employe of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employe of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

3. If the county department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services, the county department shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian refuses to accept the services, the county department may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services.

4. The county department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department shall give due regard to the culture of the subjects and shall establish that the person alleged to be responsible for the emotional damage is neglecting, refusing or unable for reasons other than poverty to remedy the harm. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The county department and licensed child welfare agency under contract with the county department shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child. The county department and licensed child welfare agency under contract with the county department shall update the record every 6 months until the case is closed.

6. The county department or licensed child welfare agency under contract with the county department shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's

parent, that person may make a written request to the county department or licensed child welfare agency under contract with the county department for information regarding what action, if any, was taken to protect the health and welfare of the child who is the subject of the report. A county department or licensed child welfare agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The county department or licensed child welfare agency may petition the court ex parte for an order prohibiting that disclosure and, if the county department or licensed child welfare agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child.

7. The county department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human service agencies to prevent, identify and treat child abuse and neglect. The county department shall coordinate the development and provision of services to abused and neglected children and to families where abuse or neglect has occurred or to children and families where circumstances justify a belief that abuse or neglect will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that it receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation it or a licensed child welfare agency under contract with the county department conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect, and for planning and policy development.

9. The county agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) *Contract with licensed child welfare agencies.* A county department may contract with a licensed child welfare agency to fulfill its duties specified under par. (c) 1., 2. b., 5., 6., 6m. and 8. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department contracts.

(d) *Independent investigation.* 1. In this paragraph, “agent” includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county department under s. 46.215 or 46.22.

2. If an agent or employe of a county department or licensed child welfare agency under contract with the county department required to investigate under this subsection is the subject of a report, or if the county department or licensed child welfare agency under contract with the county department determines that, because of the relationship between the county department or licensed child welfare agency under contract with the county department and the subject of a report, there is a substantial probability that the county department or licensed child welfare agency under contract with the county department would not conduct an unbiased investigation, the county department or licensed child welfare agency under contract with the county department shall, after taking any action necessary to protect the child, notify the department. Upon receipt of the notice, the department or a county department or child welfare agency designated by the

department shall conduct an independent investigation. If the department designates a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate that agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child.

(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 department and, if the institution making the report initially is a hospital, to the hospital.

(6) **PENALTY.** Whoever intentionally violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) **CONFIDENTIALITY.** (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by the department, county departments or licensed child welfare agencies under contract with the county departments and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to the county department or licensed child welfare agency under contract with the county department for information regarding what action, if any, was taken to protect the health and welfare of the child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child who is the subject of the report.

2. Appropriate staff of the department, a county department or licensed child welfare agency under contract with the county departments, or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employe of a county department under s. 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county department under s. 46.215 or 46.22.

6. A multidisciplinary child abuse and neglect team recognized by the county department.

6m. A person employed by a child advocacy center recognized by the county board or the county department, to the extent necessary to perform the services for which the center is recognized by the county board or the county department.

8. A law enforcement officer or agency or a district attorney for purposes of investigation or prosecution.

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g or 10j.

11m. An attorney representing the interests of an Indian tribe or band or of an Indian child in proceedings under subd. 10m. or 10r.

11r. A volunteer appointed or person employed by a court-appointed special advocate program recognized by the county board or the county department, to the extent necessary to perform the advocacy services in proceedings related to a petition under s. 48.13 for which the court-appointed special advocate program is recognized by the county board or county department.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department or licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) A county agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(d) The department may have access to any report or record maintained by a county department or licensed child welfare agency under contract with a county department under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department and county departments to the extent feasible shall conduct continuing education and training programs for staff of the department, county departments and tribal social services departments, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation and coordination in the identification, prevention and treatment of child abuse and neglect. The department and county departments 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 department 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 department shall give priority to parental organizations combating child abuse and neglect.

(d) 1. Each county department or licensed child welfare agency under contract with a county department staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect shall successfully complete training in child abuse and neglect protective services approved by the department. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and county department or licensed child welfare agency under contract with a county depart-

ment staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06 (1) (am) 3. and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs. 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.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each county department described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 W (2d) R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456.

See note to Art. I, sec. 11, citing *State v. Boggess*, 115 W (2d) 443, 340 NW (2d) 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. *State v. Hurd*, 135 W (2d) 266, 400 NW (2d) 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to and who does report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). *Phillips v. Behnke*, 192 W (2d) 552, 531 NW (2d) 619 (Ct. App. 1995).

Duty to report suspected cases of child abuse or neglect under 48.981 (3) (a) prevails over any inconsistent terms in 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving sixteen and seventeen year old children does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professional may report suspected child abuse under the permissive provisions of (2) when abuser, rather than victim, is seen in the course of professional duties. 51.30 doesn't bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section discussed. 76 Atty. Gen. 286.

Disclosure under (7) (a) 1 and (c) is mandatory. 77 Atty. Gen. 84.

Discussion of responsibility of county departments of social services to investigate allegations of child abuse and neglect. Department staff members may interview child on public school property, and may exclude school personnel from interview. School personnel cannot condition on-site interviews on notification of child's parents. 79 Atty. Gen. 48.

See note to 46.22 citing 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Atty. Gen. 66.

See note to Art. I, sec. 3, citing *New York v. Ferber*, 458 US 747 (1982).

See note to Art. I, sec. 7, citing *Pennsylvania v. Ritchie*, 480 US 39 (1987).

This section does not authorize a private cause of action for failure to report. *Isley v. Capucian Province*, 880 F Supp. 1138 (1995).

48.982 Child abuse and neglect prevention board.

(1) DEFINITIONS. In this section:

(b) "Board" means the child abuse and neglect prevention board created under s. 15.195 (4).

(bm) "Cultural competency" means the ability of an individual or organization to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.

(c) "Neglect" has the meaning given in s. 48.981 (1) (d).

(d) "Organization" means a nonprofit organization, as defined under s. 108.02 (19), or a public agency which provides or proposes to provide child abuse and neglect prevention and intervention services or parent education.

(2) POWERS AND DUTIES. The board shall:

(a) Biennially, develop and transmit to the governor and the presiding officer of each house of the legislature a plan for awarding grants to organizations. The plan shall assure that there is an equal opportunity for establishment of child abuse and neglect prevention programs, early childhood family education centers and right from the start projects. The plan shall also ensure that the grants will be distributed throughout all geographic areas of

the state and in both urban and rural communities. For grants provided under sub. (6), the plan shall also ensure that the grants are distributed based on population.

(b) Develop and publicize criteria for grant applications.

(c) Review and approve or disapprove grant applications and monitor the services provided under each grant awarded under subs. (4), (6) and (7).

(d) Solicit and accept contributions, grants, gifts and bequests for the children's trust fund or for any other purpose for which a contribution, grant, gift or bequest is made and received. Moneys received under this paragraph may be deposited in the appropriation accounts under s. 20.433 (1) (i), (q) or (r).

(e) Include as part of its annual report under s. 15.07 (6) the names and locations of organizations receiving grants, the amounts provided as grants, the services provided by grantees and the number of persons served by each grantee.

(f) Establish a procedure for an annual evaluation of its functions, responsibilities and performance. In a year in which the biennial plan under par. (a) is prepared, the evaluation shall be coordinated with the plan.

(g) In coordination with the departments of health and family services and education:

NOTE: Par. (g) (intro.) is shown as amended by 1995 Wis. Act 27. The treatment by Act 27 s. 2622 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Par. (g) (intro.), as not affected by 1995 Wis. Act 27 s. 2622, reads as follows:

(g) In coordination with the departments of health and family services and public instruction:

1. Recommend to the governor, the legislature and state agencies changes needed in state programs, statutes, policies, budgets and rules to reduce the problems of child abuse and neglect, improve coordination among state agencies that provide prevention services and improve the condition of children and persons responsible for children who are in need of prevention program services.

2. Promote statewide educational and public informational seminars for the purpose of developing public awareness of the problems of child abuse and neglect.

3. Encourage professional persons and groups to recognize and deal with problems of child abuse and neglect.

4. Disseminate information about the problems of child abuse and neglect to the public and to organizations concerned with those problems.

5. Encourage the development of community child abuse and neglect prevention programs.

(gm) Provide, for use by the board in its statewide projects under sub. (5) and for use by organizations that receive grants under subs. (4), (6) and (7), educational and public informational materials and programming that emphasize the role of fathers in the primary prevention of child abuse and neglect.

(2m) DONATION USES. If money is accepted by the board for the children's trust fund or for any other purpose under sub. (2) (d), the board shall use the money in accordance with the wishes of the donor to do any of the following:

(a) Award grants under subs. (4), (6) and (7).

(b) Pay for actual and necessary operating costs under sub. (3).

(c) Fund statewide projects under sub. (5).

(3) STAFF AND SALARIES. The board shall determine the qualifications of and appoint, in the classified service, an executive director and staff. The salaries of the executive director and staff and all actual and necessary operating expenses of the board shall be paid from the appropriations under s. 20.433 (1) (g), (i), (k), (m) and (r).

(4) AWARD OF GRANTS. (a) From the appropriations under s. 20.433 (1) (h), (i), (k), (m) and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a). In each of the first 2 fiscal years in which grants are

awarded, no organization may receive a grant or grants totaling more than \$15,000.

(b) A grant may be awarded only to an organization that agrees to match the grant, through money or in-kind services, as follows:

1. During the first year of the grant, at least 25% of the amount received for that year.

2. During the 2nd and subsequent years of a grant, at least 50% of the amount received for each year.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for programs for the primary prevention of child abuse and neglect, including, but not limited to:

1. Programs to promote public awareness of the need for the prevention of child abuse and neglect.

2. Community-based programs on education for parenting, prenatal care, perinatal bonding, child development, care of children with special needs and coping with family stress.

3. Community-based programs relating to crisis care, early identification of children at risk of child abuse or neglect, and education, training and support groups for parents, children and families.

(e) In determining which organizations shall receive grants, the board shall consider whether the applicant's proposal will further the coordination of child abuse and neglect services between the organization and other resources, public and private, in the community and the state.

(5) STATEWIDE PROJECTS. From the appropriations under s. 20.433 (1) (i) and (r), the board shall administer any statewide project for which it has accepted money under sub. (2m) (c).

(6) AWARD OF EARLY CHILDHOOD FAMILY EDUCATION CENTER GRANTS. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), (ma) and (q), the board shall award grants to organizations in accordance with the request-for-proposal procedures developed under sub. (2) (a). No organization may receive a grant or grants under this subsection totaling more than \$75,000 in any year.

(am) Notwithstanding the geographical and urban and rural distribution requirements under sub. (2) (a), the board shall allocate \$75,000 from the appropriation under s. 20.433 (1) (h) in each fiscal year for the awarding of grants, in accordance with the request-for-proposal procedures developed under sub. (2) (a), to organizations located in counties with a population of 500,000 or more.

(b) A grant may be awarded only to an organization that agrees to make a 20% match to the grant, through either money or in-kind services.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for programs that provide parenting education services but not crisis intervention. Grants shall be used for direct parent education and referrals to other social services programs and outreach programs, including programs that provide education to parents in their homes. Programs supported by the grants shall track individual clients to ensure that they receive necessary services and shall emphasize direct services to families with children who are 3 years of age or less.

(e) Grants awarded under this subsection may not supplant any other funding for parenting education.

(f) By March 1, 1991, the board shall submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees on children, in the manner provided in s. 13.172 (3). The report shall include all of the following information about grants made under this subsection:

1. The number of grants made.

2. The name of all grant recipients.

3. The number of children served.

4. Whether or not each grant recipient achieved its stated goals.

(7) AWARD OF RIGHT FROM THE START GRANTS. (a) From the appropriations under s. 20.433 (1) (h), (i), (k) and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a).

(b) A grant may be awarded only to an organization that agrees to make a 30% match to the grant, through either money or in-kind services.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) Each grant application shall include proof that the organization has the cultural competency to provide services under the grant to persons and families in the various cultures in the organization's target population and that cultural competency is incorporated in the organization's policies, administration and practices. Each grant application shall also include proof of the organization's ability to do all of the following:

1. Maximize the coordination of new and existing family support, educational and health services and minimize the duplication of those services by coordinating and collaborating with other organizations in the planning and provision of the organization's right from the start project.

2. Provide programs that identify and build on a family's strengths and that encourage a family to become independent from the organization's right from the start project and other human services programs.

3. Provide culturally competent outreach services.

4. Provide or coordinate the provision of the community-based outreach, educational and family support services of an early childhood family education center.

(e) The board shall award grants to organizations for programs that provide parenting education services but not crisis intervention. A program supported by a grant shall provide culturally competent outreach services to persons who are the parents of a newborn infant. A program supported by a grant shall emphasize direct services to families with children who are 3 years of age or less and shall provide or coordinate the provision of the community-based outreach, educational and family support services of an early childhood family education center. The board shall provide technical assistance to organizations receiving grants under this subsection.

(f) Grants awarded under this subsection may not supplant any other funding for parenting education.

(fg) An organization that receives a grant under this subsection and under sub. (6) may not use the grant moneys received under this subsection to provide any services that the organization provides under the grant received under sub. (6).

(g) By September 1, 1995, the board shall submit a report to the appropriate standing committees under s. 13.172 (3). The report shall include all of the following information about grants made under this subsection:

1. The number of grants made.

2. The name of all grant recipients.

3. The number of children served.

4. Whether or not each grant recipient achieved its stated goals.

(h) The board shall conduct an evaluation of the effectiveness of the right from the start grant program under this subsection in achieving its stated goals and, by January 2, 1997, submit a report on that evaluation to the appropriate standing committees under s. 13.172 (3).

History: 1983 a. 27; 1983 a. 109 s. 6; 1985 a. 29 ss. 930s, 3202 (8); 1987 a. 27, 184, 255; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437, 444, 491; 1995 a. 27 ss. 2622 to 2623d, 9126 (19); 1995 a. 275.

48.985 Expenditure of federal child welfare funds.

(1) FEDERAL PROGRAM OPERATIONS. From the appropriation under s. 20.435 (3) (n), the department shall expend not more than \$543,700 in fiscal year 1995–96 and not more than \$543,700 in fiscal year 1996–97 of the moneys received under 42 USC 620 to 626 for the department's expenses in connection with administering the expenditure of funds received under 42 USC 620 to 626, for child welfare projects and services provided or purchased by the department, for child abuse and neglect independent investigations and for providing child-at-risk field training to counties.

(2) COMMUNITY SOCIAL AND MENTAL HYGIENE SERVICES. (a) From the appropriation under s. 20.435 (7) (o), the department shall distribute not more than \$3,919,800 in each fiscal year of the moneys received under 42 USC 620 to 626 to county departments under ss. 46.215, 46.22 and 46.23 for the provision or purchase of child welfare projects and services, for services to children and families and for family-based child welfare services.

(3) COMMUNITY YOUTH AND FAMILY AIDS. From the appropriation under s. 20.410 (3) (oo), the department of corrections shall allocate, to county departments under ss. 46.215, 46.22 and 46.23 for the provision of services under s. 301.26, not more than \$1,100,000 in each fiscal year.

(4) RUNAWAY SERVICES. From the appropriation under s. 20.435 (3) (na) for runaway services, not more than \$458,600 in each fiscal year.

History: 1987 a. 27; 1989 a. 31, 107; 1991 a. 39, 269; 1993 a. 16, 446; 1995 a. 27.

48.987 Earnings of self-supporting minors. During any time when a parent of a minor neglects or refuses to provide for the minor's support, or support and education, the earnings of the minor shall be the minor's sole property as against such parent or any creditor of such parent.

History: 1977 c. 354 s. 94; Stats. 1977 s. 48.987; 1991 a. 316.

48.988 Interstate compact on the placement of children. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

(1) ARTICLE I – PURPOSE AND POLICY. It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with 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.

(2) ARTICLE II – DEFINITIONS. As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Placement" means the arrangement for the care of a child in a family free or boarding home 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.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

(3) ARTICLE III – CONDITIONS FOR PLACEMENT. (a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this subsection and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.

2. The identity and address or addresses of the parents or legal guardian.

3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to par. (b) may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(4) ARTICLE IV – PENALTY FOR ILLEGAL PLACEMENT. The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

(5) ARTICLE V – RETENTION OF JURISDICTION. (a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in par. (a).

(6) ARTICLE VI – INSTITUTIONAL CARE OF DELINQUENT CHILDREN. A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to being sent to such other party jurisdiction for institutional care and the court finds that:

(a) Equivalent facilities for the child are not available in the sending agency's jurisdiction and

(b) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

(7) ARTICLE VII – COMPACT ADMINISTRATOR. The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

(8) ARTICLE VIII – LIMITATIONS. This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by a parent, stepparent, 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.

(9) ARTICLE IX – ENACTMENT AND WITHDRAWAL. This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under, this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

(10) ARTICLE X – CONSTRUCTION AND SEVERABILITY. The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full

force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11) Financial responsibility for any child placed under the interstate compact on the placement of children shall be determined in accordance with sub. (5) in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of s. 49.90 or 767.42, ch. 769 or any other applicable state law fixing responsibility for the support of children also may be invoked.

(14) The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under sub. (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in the case of the state.

(15) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by sub. (5) (b).

(16) Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under sub. (5) and shall retain jurisdiction as provided in sub. (5).

History: 1977 c. 354; Stats. 1977 s. 48.99; 1977 c. 447; Stats. 1977 s. 48.988; 1981 c. 390; 1983 a. 189; 1985 a. 29 s. 3202 (23); 1987 a. 403; 1993 a. 326.

48.989 Interstate compact on the placement of children: additional procedure. (1) DEFINITIONS. In this section and in s. 48.988:

(a) "Appropriate authority in the receiving state" means the department of health and family services.

(b) "Appropriate public authorities" means the department of health and family services, which shall receive and act with reference to notices required by s. 48.988 (3).

(c) "Executive head" means the governor.

(2) FINANCIAL RESPONSIBILITY. Financial responsibility for any child placed under the provisions of the interstate compact on the placement of children shall be determined in accordance with ss. 48.60 (4) (b) and 48.988 (5). In the event of partial or complete default of performance under the compact, the provisions of s. 49.90 or 767.42, ch. 769 or any other applicable state law fixing responsibility for the support of children may also be invoked.

(3) INTERSTATE AGREEMENTS. The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under s. 48.988 (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or any subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in matters involving the state and of the chief local fiscal officer in matters involving a subdivision of the state.

(4) REQUIREMENTS. Any requirement for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed under an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof under s. 48.988 (5) (b).

(5) COURT JURISDICTION. Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under s. 48.988 (5). The court shall retain jurisdiction as provided in s. 48.988 (5).

History: 1977 c. 354; Stats. 1977 s. 48.995; 1977 c. 447; Stats. 1977 s. 48.989; 1981 c. 390; 1985 a. 29 s. 3202 (23); 1989 a. 31; 1993 a. 326; 1995 a. 27 s. 9126 (19).

48.9885 Interstate adoption agreements. (1) DEFINITIONS. In this section:

(a) "Adoption assistance agreement" means an agreement under s. 48.975 with a child's adoptive parents to provide specified benefits, including medical assistance, to the child, or a similar agreement in writing between an agency of another state and the adoptive parents of a child adopted in that state, if the agreement is enforceable by the adoptive parents.

(b) "Medical assistance" has the meaning given under s. 49.43 (8).

(c) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, the commonwealth of the Northern Mariana Islands or a territory or possession of the United States.

(2) INTERSTATE AGREEMENTS AUTHORIZED. (a) The department may, on behalf of this state, enter into interstate agreements, including the interstate compact on adoption and medical assistance, with agencies of any other states that enter into adoption assistance agreements.

(b) Each interstate agreement shall provide that, upon application by a person who has entered into an adoption assistance agreement with a party state other than the person's state of resi-

dence, the state of the person's residence shall provide medical assistance benefits under its own laws to the person's adopted child.

(c) An interstate agreement may also include the following:

1. Procedures for ensuring the continued provision of developmental, child care and other social services to adopted children whose adoptive parents reside in a party state other than the one in which the adoption assistance agreement was entered into.

2. Any other provisions determined by the department and the agency of the other party state to be appropriate for the administration of the interstate agreement.

(d) An interstate agreement is revocable upon written notice by either party state to the other party state but remains in effect for one year after the date of the written notice.

(e) Each interstate agreement shall provide that the medical assistance benefits to which a child is entitled under the provisions of the interstate agreement shall continue to apply until the expiration of the adoption assistance agreement entered into by the adoptive parents in the state in which the adoption took place, whether or not the interstate agreement is revoked under par. (d).

History: 1985 a. 308, 332.

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