vices, with the assistance of the department of justice, shall conduct a background investigation of the applicant.

2. The county department or, in a county having a population of 500,000 or more, the department of health and family services, 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 or department of health and family services considers to be appropriate.

3. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3n) at any time that the county department or department of health and family services considers to be appropriate.

(c) 1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall, in addition to the investigation under par. (b) 1., conduct a background investigation of all employees and prospective employees 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 or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees 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 or department of health and family services considers to be appropriate.

2m. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees of any person who is receiving payments under sub. (3n) who have or would have regular contact with the child for whom payments arc being made and of each adult resident at any time that the county department or department of health and family services considers to be appropriate.

3. Before a person who is receiving payments under sub. (3m) or (3n) 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 or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of the prospective employee or prospective adult resident unless that person has already been investigated under subd. 1., 2. or 2m.

(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 or, in a county having a population of 500,000 or more, the department of health and family services detennines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the county department or department of health and family services shall require the person to be 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 or, in a county having a population of 500,000 or more, 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.

(fm) I. The county department or, in a county having a population of 500,000 or more, the department of health and family services may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m) (am) 4m. The county department or department of health and family services may not finally approve the making of payments under sub. (3m) unless the county department or department of health and family services 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. or payment is approved under par. (h) 4. The county department or department of health and family services 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.

Im. The county department or, in a county having a population of 500,000 or more, the department of health and family services may not enter into the agreement under sub. (3n) (am) 6. unless the county department or department of health and family services receives information from the department of justice relating to the conviction record of the applicant under the law of this state and that record indicates either that the applicant has not been arrested or convicted or that the applicant has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that the director or person designated by the secretary determines is likely to adversely affect the child or the long–term kinship care relative's ability to care for the child. The county department or, in a county having a population of 500,000 or more, the department of health and family services may make payments under sub. (3n) 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 because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines is likely to adversely affect the child or the long–term kinship care relative's ability to care for the child.

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 or. in a county having a population of 500,000 or more, the department of health and family services that the employee 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 or, in a county having a population of 500,000 or more, the department of health and family services 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 or, in a county having a population of 500,000 or more, the department of health and family services so advises the person receiving payments under sub. (3m) or until a decision is made under par. (h) 4. to permit a person who is receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or to permit a person to be an adult resident and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises 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 infomiation from the county department or, in a county having a population of 500,000 or more, the department of health and family services 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.

2m. **A** person receiving payments under sub. (3n) 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 or. in a county having a population of 500,000 or more, the department of health and family services that, to the best of his or her knowledge, the employee 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 payment under sub. (3n) 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 pcrson to be an adult resident until the county department or, in a county having a population of 500,000 or more. the department of health and family services receives information from the department of jushce relating to the person's conviction record under the law of this state and that record indicates either that the person has not been arrested or convicted or that the person has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines that the conviction record is satisfactory because it docs not include any arrest or conviction that is likely to adversely affect the child or the long–term kinship care relative's ability to care for the child and the county department or department of health and family services so advises the person receiving payments under sub. (3n). A person receiving payments under sub. (3n) 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 or, in a county having a population of 500,000 or more, the department of health and family services 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 because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines is likely to adversely affect the child or the long–term kinship care relative's ability to care for the child.

(g) Except as provided in par. **(h),** the county department or, in a county having a population of 500,000 or more, the department of health and family services 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. 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. 961 that is punishable as a felony if committed in this state.

2. The person has had imposed on him or her a penalty specified in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.62, 939.621, 939.63 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.

NOTE: *Subd.* 2. is shown as amended eff. 2–1–03 by 2001 *Wis.* Act 109. Prior to 2–1–03 it reads:

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 he 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 a county department or, in a county having a population of 500,000 or more, the dcpartment of health and family services 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 bcing 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.

(h) 1. A person who is denied payments under sub. (3m) for a reason specified in par. (g) 1., **2.** or 3. or a person who is prohibited from employing a person in a position in which that person would have regular contact with the child for whom payments under sub. (3m) arc being made from permitting a person to be an adult resident for a reason specified in par. (g) 1., 2. or 3. may request that the denial of payments or the prohibition on employment or being an adult resident be reviewed.

2. The request for review shall be filed with the director of the county department or, in a county having a population of 500,000 or more, with the person designated by the secretary of health and family services to receive requests for review filed under this subdivision. If the governing body of a federally recognized American Indian tribe or band has entered into an agreement under sub. (3t) to administer the program under this subsection and sub. (3m), the request for review shall be filed with the person designated by that governing body to receive requests for review filed under this subdivision.

3. The director of the county department, the person designated by the governing body of a federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the sccrctary of health and family services shall review the denial of payments or the prohibition on employment or being an adult resident to determine if the conviction record on which the denial or prohibition is based includes

any arrests, convictions or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child. In reviewing the denial or prohibition, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services shall consider, but not be limited to, all of the following factors:

a. The length of time between the date of the arrest, conviction or of the imposition of the penalty and the date of the review.

b. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.

c. Whether making an exception to the denial or prohibition would be in the best interests of the child.

4. If the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services determines that the conviction record on which the denial of payments or the prohibition on employment or being an adult resident is based does not include any arrests, convictions or penaltics that are likely to adversely affect the child or the ability of the kinship care relative to care for the child, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services may approve the making ofpayments under sub. (3m) or may permit a person receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident.

5. A decision under this paragraph is not subject to review undcr ch. 227.

(hm) A county department or, in a county having a population of 500,000 or more, the department may not make payments to a person under sub. (3n) and a person receiving payments under sub. (3n) may not employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident if the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this paragraph determines that the person has any arrest or conviction that is likely to adversely affect the child or the long–term kinship care relative's ability to care for the child.

(i) A county department and, in a county having a population of 500,000 or more, the department of health and family services shall keep confidential all information received under this subsection from the department ofjustice or the federal bureau of investigation. Such information is not subject to inspection or copying under s. 19.35.

(j) A county department or, in a county having a population of 500,000 or more, 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.

(3t) Notwithstanding subs. (3m), (3n) and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe or band to allow that governing body to administer the program under subs. (3m), (3n) and (3p) within the boundaries of that reservation. Any agreement under this subsection relating to the administration of the program under sub. (3m) shall specify the person with whom a request for review under sub. (3p) (h) 2. may be filed and the person who has been designated by the governing body to conduct the review under sub. (3p) (h) 3. and make the detemiination under sub. (3p) (h) 4. Any agreement under this subsection relating to the administration of the program undcr sub. (3n) shall specify who is to make any determination as to whether a conviction record is satisfactory.

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. 189s. 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); 1995a.77.289. **443;** 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, **103, 133,** 162; 2001 a. 16 ss. 1629, 4036–4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

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 Wis. 2d 521,219 N.W.2d 335 (1974).

County agencies providing child welfare services do not have authority under sub. (1) or s. 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 under s. 46.215, 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 arc placed in separate facilities.

(d) Provide temporary shelter care for children taken into custodyunder s. 48.19 or 938.19.

History: 1973 c. 90: 1975 c. 39, 189, 214: 1977 c. 29, 194, 271, 354, 418, 447, 449: 1979 c. 34 s. 2102 (20) (a); 1979c.300; 1981 c. 20; 1985 a. 176; 1995a.77; 1997 a. 27.

48.59 Examination and records. (1) The county department or, in a county having a population of 500,000 or more, the department or an agency undcr contract with the 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 of every expectant mother of an unbom child placed under its supervision under s. 48.347 and make any physical or mental examinations of the child or expectant mother considered necessary to determine the type of care necessary for the child or expectant mother. The county department, department or agency shall screen a child or expectant mother who is examined under this subsection to determine whether the child or expectant mother is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance. The county department, department or agency shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the child or expectant mother, the results of all tests and examinations given the child or expectant mother and a complete history of all placements of the child while in the legal custody or under the supervision of the county department, department or agency or of the expectant mother while under the supervision of the county department, department or agency.

(2) At the department's request, the county department shall report to the department regarding children who are in the legal custody or under the supervision of the county department and expectant mothers of unborn children who are under the supervision of the county department.

History: 1977 c. 449; 1985 a. 176; 1993 a. 385, 446, 491; 1995 a. 77; 1997 a. 27, 292.

A county with a population under 500,000 may. by ordinance under s. 19.21 (6), provide for the destruction of obsolete case records maintained by county social services agencies. 70 Atty. Gen. 196.

SUBCHAPTER XIII

CHILD WELFARE AGENCIES

48.599 Definitions. In this subchapter:

(1) "Physical rcstraint" includes all of the following:

(a) A locked room.

(b) **A** device or garment that intcrfcres 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, meet the requirements specified in **s.** 48.685 and pay the applicable license fee under **s.** 48.615 (1) (a) or (b). **A** license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(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 or nursing home 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.

(3) Before issuing or continuing 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 licensing or continuing the license 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 a disability" has the meaning given in **s.** 115.76 (5).

(b) Notwithstanding **ss.** 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 special education and related services to a child with a disability who has been placed with the child welfare agency under 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 rcsidcntial care center for children and youth 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 undcr 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. 2552.9126 (19); 1995 a. 77; 1997 a. 27, 164; 1999 a. 9. 83; 2001 a. 59.69.

Cross Reference: See also ch. HFS 5, Wis. adm. code.

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; 1999 a. 83.

Cross Reference: See also ch. HFS 54, Wis. adm. code.

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 a residential care center for children and youth operated by the child welfare agency, the child welfare agency must pay to the department a biennial fee of $121, plus a biennial fee of $18.15 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 $254.10

(c) **A** child welfare agency that wishes to continue a license issued under s. 48.60 (1) shall pay the applicable fee under par. (a) or (b) by the continuation date of the license.

(d) A new child welfare agency shall pay the applicable fee undcr 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 continue a license issued under **s.** 48.60 (1) and that fails to pay the applicable fee under sub. (1) (a) or (b) by the continuation 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: 1997 a. 27; 2001 a. 59.

SUBCHAPTER XIV

FOSTER HOMES AND TREATMENT FOSTER HOMES

48.619 Definition. In this subchapter, "child" means a person under 18 years of age and also includes, for purposes of counting the number of children for whom a foster home, treatment foster home, or group home may provide care and maintenance, a person 18 years of age or over, but under 19 years of age, who is a full–time student at a secondary school or its vocational or technical equivalent, who is reasonably expected to complete the program before reaching 19 years of age, who was residing in the foster home, treatment foster home, or group home immediately prior to his or her 18th birthday, and who continues to reside in that foster home, treatment foster homc, or group homc.

History: 2001 a. 69.

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, if necessary to enable a sibling group to remain together, 6 or fewer children

or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, 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 48.978 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 48.978 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 or a treatment foster home, the department, county department or child welfare agency shall notify the clerk of the school district in which the foster home or treatment foster home is located that a foster home or treatment 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, 2000, the age–related rates are: $299 for children aged 4 and under; $326 for children aged 5 to 11; $371 for children aged 12 to 14 and $387 for children aged 15 to 17. Beginning on January 1, 2001, the age–related rates are: $302 for children aged 4 and under; $329 for children aged 5 to 11; $375 for children aged 12 to 14; and $391 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: 1997 a. 27.334; 1999 a. 9; 2001 a. 69.

Cross Reference: See also ch. HFS 56, Wis. adm. code.

A foster child in a family owned foster hoine under a one–year dispositional order is a resident of the household for insurance purposes. A. G. v. Travelers Insurance Co. 112 Wis. 2d 18, 331 N.W.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–liceiised foster homes are immune from local zoning ordinances restricting the 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, not including children who under sub. (1m) are not counted toward that number, 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, meet the requirements specified in **s.** 48.685 and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in **s.** 48.66 *(5)*.

(1m) The department may issue a license under sub. (1) authorizing a group home solely to provide a safe and structured living arrangement for children 12 years of age or over who are custodial parents, as defined in s. 49.141 (1) (b), or expectant mothers and who are placed in the group home under s. 48.345 (3) (cm) or 938.34 (3) (cm) and for children 14 years of age or over who are custodial parents, as defined in s. 49.141 (1) (b), or expectant mothers and who are placed in the group home under voluntary agreements under s. 48.63 (5), and to provide those children with training in parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote the long–term economic independence of those children and the well–being of the children of those children. In licensing a group home described in this subsection, the department may not count toward the number of children whom the group home is licensed to serve the child of a child who is placed in the group home. The department shall promulgate rules establishing standards for a group home described in this subsection. Those rules shall require such a group home to provide for the health, safety, and welfare of the child of any child custodial parent who has been placed in that group home and to have a policy governing visitation between such a child and the child's noncustodial parent.

(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 $121, plus a biennial fee of $18.15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to continue a license issued under sub. (1) shall pay the fee under this paragraph by the continuation 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 continue a license issued under sub. (1) and that fails to pay the fee under par. (a) by the continuation 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) or to a treatment foster home licensed under **s.** 48.62 (1) (b).

History: 1977 c. 418; 1985 a. 281; 1991 a. 39; 1993 a. 395,446; 1995 a. 27; 1997 a. 27; 2001 a. 69.

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, renew or continue a foster home, treatment foster home or family–operated group homc 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 undcr 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 I, 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 $100 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 ycar.

(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: 1979c. 121; 1981 c. 20; 1983 a. 27: 1985 a. 24, 29, 106. 154, 332, 336; 1987 a. 27.317; 1989 a. 31; 1993 a. 446; 1995 a. 27: 1997 a. 27; 2001 a. 16.

Foster parents are not agents of the county for purposes of tort liability. Kan B. v. Dane County. 198 Wis. 2d 24.542 N.W.2d 777 (Ct. App. 1995).

48.63 Restrictions on placements. (1) Acting undcr 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, treatment foster homes, or group 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 180 days from the date on which the child was removed from the home under the voluntary agreement. A group home placement under a voluntary agreement may not exceed 15 days from the date on which the child was removed from the home under the voluntary agreement, except as provided in sub. (5). 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 sub. *(5)* (b) and shall be in writing and shall specifically state that the

agreement may be terminated at any time by the parent or guardian 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 date on which the child was removed from his or her home under the voluntary agreement. 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 that 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.

(5) (a) Subsection (1) does not apply to the voluntary placement under par. (b) of a child in a group home described in s. 48. 625 (Im). Such placements may be made only as provided in par. (b).

(b) If a child who is at least 14 years of age, who is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe and structured living arrangement and the parent or guardian of the child consent, a child welfare agency licensed to place children in group homes may place the child or arrange the placement of the child in a group home described in s. 48.625 (Im). Before placing a child or arranging the placement of a child under this paragraph, the child welfare agency shall report any suspected abuse or neglect of the child as required under s. 48.981 (2). A voluntary agreement to place a child in a group home described in s. 48.625 (Im) may be made only under this paragraph, shall be in writing, and shall specifically state that the agreement may bc terminated at any time by the parent, guardian, or child. An initial placement under this paragraph may not exceed 180 days from the date on which the child was removed from the home under the voluntary agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement under this paragraph of a child who is under 16 ycars of age on the date of the initial placement may be extended as provided in par. (d) 3. to 6. no more than once.

(c) A permanency plan under s. 48.38 is required for each child placed in a group home under par. (b) and for any child of that child who is residing with that child. The agcncy that placed the child or that arranged the placement of the child shall prepare the plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement and shall provide a copy of the plan to the child and the child's parent or guardian.

(d) 1. In this paragraph, "independent reviewing agency" means a person contracted with under subd. 2. to review permanency plans and placements under subds. 3. to 6.

2. An agency that places children under par. (b) or that arranges those placements shall contract with another agency licensed under s. 48.61 (3) to place children or with a county department to review the permanency plans and placements of those children and of any children of those children who are residing with those children as provided in subds. 3. to 6.

3. If the agency that has placed a child under par. (b) or that has arranged the placement of the child wishes to extend the placement of the child, the agency shall prepare a revised permanency plan for that child and for any child of that child who is residing with that child and submit the revised permanency plan or plans, together with a request for a review of the revised permanency plan or plans and the child's placement, to the independent reviewing agency before the expiration of the child's placement. The request shall include a statement that an extension of the child's placement would be in the best interests of the child, together with reliable and credible information in support of that statement, a statement that the child and the parent or guardian of the child consent to the extension of the child's placement, and a request that the independent reviewing agency approve an extension of the child's placement. On receipt of a revised permanency plan or plans and a request for review, the independent reviewing agency shall set a time and place for the review and shall advise the agency that placed the child or that arranged the placement of the child of the time and place of the review.

4. Not less than 10 days before the review, the agency that placed the child or that arranged the placement of the child shall provide a copy of the revised permanency plan or plans and the request for review submitted under subd. 3. and notice of the time and place of the review to the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child is placed, together with notice of the issues to be determined as part of the permanency plan review and notice of the fact that those persons may have the opportunity to be heard at the review by submitting written comments to that agency or the independent reviewing agency before the review or by participating at the review.

5. At the review, any person specified in subd. 4. may present information relevant to the issue of extension and information relevant to the determinations specified in s. 48.38 *(5)* (c). After receiving that information, the independent reviewing agency shall make the determinations specified in s. 48.38 *(5)* (c) and determine whether an extension of the child's placement is in the best interests of the child and whether the child and the parent or guardian of the child consent to the extension. If the independent reviewing agency determines that the extension is in the best interests of the child and that the child and the parent or guardian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent or guardian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval. and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent or guardian of the child may terminate the placement at any time during the extension period.

6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall provide a copy of that summary to the independent reviewing agency, the child, the parent, guardian. and legal custodian of the child, and the operator of the group home in which the child was placed.

History: 1977 *c.* 351.449; 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; 2001 a. 69. 109.

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, treatment foster homes, or group homes.

(1m) FOSTER HOME. TREATMENT FOSTER HOME AND GROUP HOME AGREEMENTS. If an agency places a child in a foster home, treatment foster home or group 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 may 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 or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. **(4)** (a) or (c) sign written waivers of objection to the proposed removal. 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, a treatment foster home or a group home, the agency shall notify the clerk of the school district in which the foster home, treatment foster home or group home is located that a school–age child has been placed in a foster home, treatment foster home or group homc 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 OK 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 undcr 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 bc 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 homc and the supervising agency under sub. (2) shall he 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); 1997 a. 104; 2001 a. 69.

Cross Reference: See also ch. HFS 57, Wis. adm. code.

Foster parents' rights were violated by the department's failure to give mandatory written notice under sub. (1), [now (1m)] but. since adoptive placement was found to be in the children's best interest, the foster parents' rights were subordinated to the paramount interest of the children. In matter of Z. 81 Wis. 2d 194,260 N.W.2d 246 (1977).

A foster parent is entitled to a hearing under sub. (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. *Bingenheimer v.* DHSS, 129 Wis. 2d 100,383 N.W.2d 898 (1 986).

Sub. (4) (a) requires a hearing when an adoption agency removes a child from an adoptive placement within 6 months. Thelen v. DHSS, 143 Wis. 2d 574,422 N.W.2d 146 (Ct. App. 1988).

Foster children have a constitutional right under the due process clause to safe and secure placement in a foster home. Whether a public official violated that right will be determined based on a professional judgment standard. Kara B. v. Dane County. 205 Wis. 2d 140. 555 N.W.2d 630 (1996). See also Estate of Coopers. Milwaukee County, 103 F. Supp. 2d 1124 (2000)

The best interest of the child standard under sub. (4) (c) must he read in conjunction with the children's code directive that a child's best interest is generally sewed by being reunited with his or her family. Sallie T. v. Milwaukee County DHSS, 2 I2 Wis. 2d 694,570 N.W.2d 46 (Ct. App. 1997).

Sallie T. does not require that the trial court be blind to events preceding the most recent dispositional order. Constitutional protections of a parent's right to his or her child do not prevent the application of the best interests of the child standard as the central focus of determining where the child shall live. "Best interest?" and "safety" are not synonymous. Richard D. v. Rebecca G. 228 Wis. 2d 658.599 N.W.2d 90 (Ct. App. 1999).

While prospective adoptive parents have a limited protected liberty interest in the family unit during the first 6 months of placement, that interest does not require a pre–removal 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 dcpartmcnt. 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, meet the requirements specified in s. 48.685 and pay the license fee under sub. (3). **A** license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(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 $60.50. 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 $30.25, plus a biennial fee of $8.47 per child, based on the number of children that the day care center is licensed to serve. **A** day care center that wishes to continue a license issued under sub. (1) shall pay the applicable fee under this paragraph by the continuation 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 continue a license issued under par. (a) and that fails to pay the applicable fee under par. (a) by the continuation 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; 1997 a. 27, 35.

***Cross* Reference:** See also chs. HFS **45,** 46, and 55. Wis. adm. code.

The distinction created by sub. (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 of workforcc development under s. 49.155 (1d), each day care provider reimbursed for child care services provided to families determined eligible under **s.** 49.155, 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. To be certified under this section, a person must meet the minimum requirements for Certification established by the department of workforcc development under s. 49.155 (1d), meet the requirements specified in **s.** 48.685 and pay the fee specified in this section. The county shall certify the following categories of day care providers:

(a) Level I certified family day care providers, as established by the department of workforce development under **s.** 49.155 (1d). 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.

(b) Level II certified family day care providers, as established by the department of workforce development, under **s.** 49.155 (1d).

(2m) Each county department shall provide the department with information about each person who is denied certification for a reason specified in **s.** 48.685 (4m) (a) 1. to 5.

History: 1983 a. 193; 1985 a. 176: 1995 a. 289,403: 1997 a. 27, 35, 252; 1999 a. 9: 2001 a. 16.

Cross Reference: See also ch. DWD 55, Wis. adm. code.

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 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: 1997 a. 256.

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 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 liccnsure 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 employee of the day carc 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 carc center shall post with the report any notices rcccived 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 employee 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; 1997 a. 256.

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) (a) Except as provided in s. 48.715 (6) and (7), 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.** 938.22, 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 super-

vise county departments in accordance with the procedures specified in this section and in ss. 48.67 to 48.74.

(b) Except as provided in s. 48.715 (6), 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 juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 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 juveniles. The department of corrections may also license not more than 5 county departments, as defined in s. 938.02 (2g), or not more than 5 consortia of county departments to operate not more than 5 group homes that have been licensed under par. (a) as secured group homes, as defined in s. 938.02 (15p), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34 (4m) and referred to the county department by the court and to provide supervision, care and maintenance for those juveniles.

(c) ***A*** license issued under par. (a) or (b), other than a license to operate a foster home, treatment foster home, secured child caring institution or secured group home, is valid until revoked or suspended. A license issued under this subsection to operate a foster home, treatment foster home, secured child caring institution or secured group home may be for any term not to exceed 2 years from the date of issuance. No license issued under par. (a) or (b) is transferable.

(2) The department shall prescribe application forms to be used by all applicants for licenses from it. The application forms prescribed by the department shall require that the social security numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are individuals, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under sub. (2m) (a) ***2.,*** be provided and that the federal employer identification numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are not individuals be provided.

(2m) (a) 1. Except as provided in subd. 2., the department of health and family services shall require each applicant for a license under sub. (1) (a) to operate a child welfare agency, group home, shelter care facility or day care center who is an individual to provide that department with the applicant's social security number. and shall require each applicant for a license under sub. (1) (a) to operate a child welfare agency, group home, shelter care facility or day care center who is not an individual to provide that department with the applicant's federal employer identification number, when initially applying for or applying to continue the license.

2. If an applicant who is an individual does not have a social security number. the applicant shall submit a statement made or subscribed under oath or affirmation to the department of health and family services that the applicant does not have a social security number. The form of the statement shall be prescribed by the departnient of workforce development. **A** license issued in reliance upon a false statement submitted under this subdivision is invalid.

(am) 1. Except as provided in subd. 2., the department of corrections shall require each applicant for a license under sub. (1) (h) to operate a secured child caring institution who is an individual to provide that department with the applicant's social security number when initially applying for or applying to renew the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statcnient made or subscribed under oath or affirmation to the department of corrections that the applicant does not have a social security number. The form of the statement shall bc prescribed by the department of workforce development. **A** license issued in reliance upon a false statement submitted under this subdivision is invalid.

(b) If an applicant who is an individual fails to provide the applicant's social security number to the department of health and family services or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to that department, that department may not issue or continue a license under sub. (1) (a) to operate a child welfare agency, group home, shelter care facility or day care center to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (a) 2.

(bm) If an applicant who is an individual fails to provide the applicant's social security number to the department of corrections, that department may not issue or renew a license under sub. (1) (b) to operate a secured child caring instihition to or for the applicant unless the applicant does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (am) 2.

(c) The department of health and family services may not disclose any information obtained under par. (a) 1. to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the department of workforce development under s. 49.22 (2m).

(cm) The department of corrections may not disclosc any information obtained under par. (am) 1. to any person except on the request of the department of workforce development under s. 49.22 (2m).

(3) The department shall prescribe the form and content of records to be kept and information to be reported by persons licensed by it.

(5) A child welfare agency, group home, day care center or shelter care facility license, other than a probationary license, is valid until revoked or suspended, but shall be reviewed every 2 years after the date of issuance as provided in this subsection. At least 30 days prior to the continuation date of the license, the licensee shall submit to the department an application for continuance of the license in the form and containing the information that the department requires. If the minimum requirements for a license established under s. 48.67 are met, the application is approved, the applicable fees referred to in ss. 48.68 (1) and 48.685 **(8)** are paid and any forfeiture under s. 48.715 (3) (a) or penalty under s. 48.76 that is due is paid, the department shall continue the license for an additional 2–year period. unless sooner suspended or revoked. If the application is not timely filed, the department shall issue a warning to the licensee. If the licensee fails to apply for continuance of the license within 30 days after receipt of the warning, the department may revoke the license as provided in s. 48.715 (4) and (4m) (b).

History: 1975c.307; 1977~29,271,418,447t979 c. 330; 1985 a. 176; 1993 a. 375 ss. 10. 12, 13; 1993a. 377, 446, 491; 1995a. 27, 77, 352; 1997 a. 27. 191.205, 237; 1999a. 9.

Cross Reference: *See* also ch. HFS 38, Wis. adm. code.

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 public instruction before promulgating these rules. In establishing the minimum requirements for the issuance of licenses to day care centers that provide care and supervision for children under one year of age, the department shall include a requirement that all licensees who are individuals and all employees and volunteers

of a licensee who provide care and supervision for children receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome.

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); 1997 a. 27; 2001 a. 16.

Cross Reference: See also chs. HFS 45 and 46, Wis. adm. code.

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 devclopmcnt 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 appropriation under s. 20.435 (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:

(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; 1997 a. 35.

Cross Reference: See also ch. HFS 38, 45, 46, 52, 54, 55, 56, and 57, Wis. adm. code.

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 and meets the requirements specified in s. 48.685, if applicable. In determining whether to issue or continue a license, the department may consider any action by the applicant, or by an employee of the applicant, that constitutes a substantial failure by the applicant or employee 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) (a) or, if applicable, a probationary license under s. 48.69 or, if applicable, shall continue a license under s. 48.66 (5). 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 continuing the license of any child welfare agency to operate a residential care center for children and youth or of any group home, the department shall consider all formal complaints filed under s. 48.745 (2) and the disposition of each during the previous 2-year period.

(3) Within 10 working days after receipt of an application for initial licensure of a child welfare agency to operate a residential care center for children and youth or of a 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 that may affect the health and safety of the residents of the residential care center for children and youth or group home. No license may he issued to a child welfare agency to operate a residential care center for children and youth or to a 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 care center for children and youth 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 care center for children and youth 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 care center for children and youth 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 care center for children and youth or group home on the neighborhood. The dcpartrnent 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; 1997 a. 27: 1999 a. 9; 2001 a. 59.

Cross Reference: See also ch. HFS 56, Wis. adm. code.

48.685 Criminal history and child abuse record search. (1) In this section:

(ag) 1. "Caregiver" means any of the following:

a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of the entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.

b. A person who has, or is seeking, a license, certification or contract to operate an entity.

2. "Caregiver" does not include a person who is certified as an emergency medical technician under s. 146.50 if the person is employed, or seeking employment. as an emergency medical technician and does not include a person who is certified as a first responder under s. 146.50 if the person is employed, or seeking employment, as a first responder.

(am) "Client" means a child who receives direct care or treatment services from an entity.

(ar) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(av) "Direct contact" means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes; a foster home or treatment foster home that is licensed under s. 48.62; a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a day

care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a day care provider that is certified under s. 48.651; or a temporary employment agency that provides caregivers to another entity.

(bg) "Foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(bm) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(br) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho–Chunk Nation.

(c) "Serious crime" means a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.055. 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.19 (3), 1999 stats., or a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 if committed in this state.

NOTE: Par. (c) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(c) "Serious crime" means a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2). (3), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3). 940.285 (2), 940.29, 940.295, 948.02 (1) or (2), 948.025, 948.03 (2), 948.05. 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (3), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1) or (2), 948.025, 948.03 (2). 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 if committed in this state.

(d) 'Treatment foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(e) "Tribe" means a federally recognized American Indian tribe or band in this state.

(2) (am) The department, a county department, a child welfare agency or a school board shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b., a nonclient resident of an entity and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651:

1. **A** criminal history search from the records maintained by the department of justice.

2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

3. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

5. Information maintained by the department under this section and under ss. 48.651 (2m), 48.75 (Im) and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification: a contract, employment or permission to reside as described in this subdivision, the department, a county department, a child welfare agency or a school board need not obtain the information specified in subds. 1. to 4.

(b) 1. Every entity shall obtain all of the following with respect to a caregiver of the entity:

a. **A** criminal history search from the records maintained by the department of justice.

b. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

e. Information maintained by the department under this section and under ss. 48.651 (2m), 48.75 (Im) and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

4. Subdivision 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age, who is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651 and with respect to whom the department, a county department or a school board is required under par. (am) (intro.) to obtain the information specified in par. (am) 1. to 5.

(bb) If information obtained under par. (am) or (b) 1. indicates a charge of a serious crime, but docs not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) 1. does not indicate such a charge or conviction, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b) 1., a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(bd) Notwithstanding pars. (am) and (b) 1., the department, a county department, a child welfare agency or a school board is not required to obtain the information specified in par. (am) 1. to 5., and an entity is not required to obtain the information specified in par. (b) 1. a. to e., with respect to a person under 18 years of age whose background information form under sub. (6) (am) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department, county department, child welfare agency: school board or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the depart-

ment, a county department, a child welfare agency or a school board from obtaining, at its discretion, the information specified in par. **(am)** 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(bg) If an entity employs or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b) 1. a. to c. and e. has already been obtained by another entity, the entity may obtain that information from that other entity, which shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b) 1. a. to c. and e. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b) 1. a. to c. and c.

(bm) If the person who is the subject of the search under par. (am) or (b) 1. is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department, county department, child welfare agency, school board or cntity determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the department, county department, child welfare agency, school board or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1. a. The department, county department, child welfare agency, school board or entity may require the person to be 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 arrests and convictions.

(d) Every entity shall maintain, or shall contract with another person to maintain, the most recent background information obtained on a caregiver under par. (b). The information shall be made available for inspection by authorized persons, as defined by the department by rule.

(3) (a) Every 4 years or at any time within that period that the department, a county departmcnt, a child welfare agency or a school board considers appropriate, the department, county department, child welfare agency or school board shall request the information specified in sub. *(2)* (am) 1. to 5. for all persons who are licensed. certified or contracted to operate an entity, for all persons who are nonclient rcsidcnts of an cntity and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under **s.** 48.65 or established or contracted for under s. 120.13 (4) or of a day care provider that is certified under s. 48.651.

(b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. a. to e. for all persons who are caregivers of the entity other than persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under **s.** 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651.

(3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a county department, a child welfare agency or a school board has obtained the information required under sub. (2) (am) or (3) (a) with respect to a person who is a caregiver specified in sub. (1) (ag) 1. b. and that person is also an employee, contractor or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

(4) **An** entity that violates sub. (2), (3) or (4m) (b) may be required to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(4m) (a) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (5), the department may not license, or continue or renew the license of, a person to operate an entity, a county department may not certify a day care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home or treatment foster home under s. 48.62 and a school board may not contract with a person under s. 120.13 (14), if the department, county department, child welfare agency or school board knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification or if the person is proposing to contract with a school board under s. 120.13 (14) or to renew a contract under that subsection, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(ad) The department, a county department or a child welfare agency may license a foster home or treatment foster home under s. 48.62, a county department may certify a day care provider under s. 48.651 and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) indicating that the person is not ineligible to be licensed, certified or contracted with for a reason specified in par. (a) 1. to 5.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an cntity may not employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the entity knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61 *(2)* (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981 (3) (c) 4. that the person has abused or neglected a child.

5. That, in the case of a position for which the pcrson must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(c) If the background information form completed by a pcrson under sub. (6) (am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2) (am) 1. to 5. or (b) 1. If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be permitted to reside at an entity for a

reason specified in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information sought under sub. (2) (am). An entity shall provide supervision for a person who is employed, contracted with or permitted to reside as permitted under this paragraph.

(5) (a) The department may license to operate an entity, a county department may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62 and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department; the child welfare agency or the school board or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

(bm) For purposes of licensing a foster home or treatment foster home, no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

1. An offense under ch. 948 that is a felony.

2. A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), *(5)* or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person.

NOTE: Subd. 2. is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

2. A violation of s. 940.19 (2), (3), (4). (5) or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person.

3. A violation of s. 943.23 (1m) or (Ir), 1999 stats., or of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2) or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), 943.23 (1g) or 943.32 (2).

NOTE: Subd. 3. is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

3. A violation of s. 940.01, 940.02, 940.03, 940.05, 910.06, 940.21, 940.225 (1), (2) or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), 943.23 (1g), (Im) or (Ir) or 943.32 (2).

4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (l), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, or 940.025 [s. 940.251, a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (e) or (f), (2j) (d) or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2) (am).

NOTE: Subd. 4. is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. The bracketed language indicates the correct cross–reference. Corrective legislation is pending. Prior to 2–1–03 it reads:

4. A violation of s. 125.075 (I), 125.085 (3) (a) 2., 125.105 (2) (b). 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (3), (4), (5), or (6). 940.20, 940.203, 940.205, 940.207. or 940.25, a violation of s. 346.63 (1), (2). (5), or (6) that is a felony under s. 346.65 (2) (e) or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2) (am).

(5c) (a) Any person who is permitted but fails under sub. *(5)* (a) to demonstrate to the department or a child welfare agency that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(b) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the county department that he or she has been rehabilitated may appeal to the director of the county department or his or her designee. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to appeal the decision under ch. 68.

(c) Any person who is permitted but fails under sub. *(5)* (a) to demonstrate to the school board that he or she has been rehabilitated may appeal to the state superintendent of public instruction or his or her designee. Any person who is adversely affected by a decision of the state superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(5d) (a) Any tribe that chooses to conduct rehabilitation reviews under sub. *(5)* shall submit to the department a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

3m. The title of the person or body, designated by the tribe, to whom a person may appeal an adverse decision made by the person specified under subd. 3. and whether the tribe provides any further rights to appeal.

4. The manner in which the tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).

5. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

(b) If, within 90 days after receiving the plan, the department does not disapprove the plan, the plan shall be considered approved. If, within 90 days after receiving the plan, the department disapproves the plan, the department shall provide notice of that disapproval to the tribe in writing, together with the reasons for the disapproval. The department may not disapprove a plan unless the department finds that the plan is not rationally related to the protection of clients. If the department disapproves the plan, the tribe may, within 30 days after receiving notice of the disapproval, request that the secretary review the department's decision. A final decision under this paragraph is not subject to fiirther review under ch. 227.

(5g) Beginning on January I 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172 (2) that specifies the number of persons in the previous year who have requested to demonstrate that they have been rehabilitated under sub. *(5)* (a), the number of persons who successfully demonstrated that they have been rehabilitated under sub. *(5)* (a) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

(5m) Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, a county department or a child welfare agency may refuse to license a foster home or treatment foster home under s. 48.62, and an entity may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the person has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department, county department, child welfare agency or entity, substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a day care center, a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14), a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) and a day care provider that is certified under s. 48.651 may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the day care center or day care provider if the person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, but that is, in the estimation of the department,

county department, school board, day care center or day care provider, substantially related to the care of a client.

(6) (a) The department shall require any person who applies for issuance, continuation or renewal of a license to operate an entity, a county department shall require any day care provider who applies for initial certification under s. 48.651 or for renewal of that certification, a county department or a child welfare agency shall require any person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under **s.** 48.62 and a school board shall require any person who proposes to contract with the school board under **s.** 120.13 (14) or to renew a contract under that subsection, to complete a background information form that is provided by the department.

(am) Every 4 years an entity shall require all of its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department.

(b) 1. For caregivers who are licensed by the department, for persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under **s.** 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, for persons who are nonclient residents of an entity that is licensed by the department, and for other persons specified by the department by rule, the entity shall send the background information form to the department.

2. For caregivers who are licensed or certified by a county department, for persons who are nonclient residents of an entity that is licensed or certified by a county department and for other persons specified by the department by rule, the entity shall send the background information form to the county department.

3. For caregivers who are licensed by a child welfare agency, for pcrsons who are nonclient residents of an entity that is licensed by a child welfare agency and for other persons specified by the department by rule, the entity shall send the background information form to the child welfare agency.

4. For caregivers who are contracted with by a school board, for pcrsons who are nonclient residents of an entity that is contracted with by a school board and for other persons specified by the department by rule, the entity shall send the background information form to the school board.

(c) **A** person who provides false information on a background infomiation form required under this subsection may be required to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(7) The dcpartment shall do all of the following:

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

(d) Provide a background information form that requires the person completing the form to include his or her date of birth on the form.

(8) The department, a county department, a child welfare agency or a school board may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a) or for providing information to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The fee may not exceed the reasonable cost of obtaining the infomiation. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be inconsistent with federal law.

History: 1997 a. 27, 237, 281: 1999 a. 9, 32, 56. 185, 186; 2001 a. 109.
Cross Reference: See also ch. **HFS** 12. Wis. adm. code.

48.69 Probationary licenses. Except as provided under s. 48.715 (6) and (7), 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) (a) 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, except as provided under s. 48.715 (6) and (7), 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). **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; 1997 a. 191.737; 1999 **a.** 9.

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) this section, "licensee" means a person who holds a license under s. 48.66 (1) (a) 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) (a) 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) (a) 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 employee.

(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 trcasurcr 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 forfciturc has been paid.

(b) Suspension of the licensee's license for not more than 2 weeks.

(c) Refusal to continue 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) (a) 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.

(e) The licensee has failed to apply for a continuance of the license within 30 days after receipt of the warning under s. 48.66 (5).

(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), (c) or (e), 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) (a) or a probationary license under s. 48.69 to any person who has had a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 revoked within the previous 5 years.

(6) The department of health and family services shall deny, suspend, restrict, refuse to renew or otherwise withhold a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 to operate a child welfare agency, group home, shelter care facility or day care center, and the department of corrections shall deny, suspend, restrict, refuse to rcncw or otherwise withhold a license under s. 48.66 (1) (b) to operate a secured child caring institution, for failure of the applicant or licensee to pay court–ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for failure of the applicant or licensee to comply, after appropriate notice, with a subpoena or warrant issued by the dcpartmcnt of workforce development or a county child support agency under s. 59.53 *(5)* and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 48.72, an action taken under this subsection is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in s. 48.72.

(7) The department shall deny an application for the issuance or continuation of a license under s. 48.66 (1) (a) or a probationary license undcr s. 48.69 to operate a child welfare agency, group home. shelter care facility or day care center, or revoke such a license already issued, if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. An action taken under this subsection is subject to review only as provided under s. 73.0301 *(5)* and not as provided in s. 48.72.

History: 1991 a. 215: 1993 **a.** 375; 1995 **a.** 21; 1997 **a.** 27. 191,237; 1999 a. 9, 32. 186.

48.72 Appeal procedure. Except as provided in s. 48.7 15 (6) and (7), any person aggrieved by the department's refusal or failure to issue, renew or continue 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, renew or continue 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; 1997 **a.** 27. 191,237.

48.73 Inspection of licensees. The department may visit and inspect each child welfare agency, foster home, treatment fos-

ter 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.** 346.

48.735 Immunization requirements; day care centers. The department, after notice to a day care center licensee, may suspend, revoke or refuse to continue a day care center 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;** 1997 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 or continue 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; 1997 a. 27.

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 operating a residential care center for children and youth or by a 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 residential care center for children and youth or group home and shall not be subject to reprisals for doing so. All formal complaints regarding residential care centers for children and youth and group homes shall bc filed with the county department on forms supplied by the county department unless the county department designates the departmcnt 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 that licenses residential care centers for children and youth 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 residential care center for children and youth 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 infonnation to the unit within the department which is cmpowcred 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 dcpartinent 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; 2001 a. 59.

48.75 Foster homes and treatment foster homes licensed by public licensing agencies and by child welfare agencies. (1b) In this section, "public licensing agency" means a county department or, in a county having a population of 500,000 or more, the department.

(1d) Child welfare agencies, if licensed to do so by the department, and public licensing agencies 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 he revoked by the child welfare agency or by the public licensing agency 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 rcquircments for a license. The licensee shall be given written notice of any revocation and the grounds therefor.

(1g) (a) **A** public licensing agency may license a foster home only if the foster home is located in the county of the public licensing agency, except that a public licensing agency 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 public licensing agency 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 public licensing agency issuing the license and the county in which the foster home is located are contiguous.

4. The county of the public licensing agency issuing the license has a population of 500,000 or more and the placement is for adoption undcr **s.** 48.833, 48.835 or 48.837.

5. The public licensing agency of the county in which the prospective foster home is located requests the public licensing agency of another county to license the foster home.

(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 par. (a) 1., 2. or 3. unless the public licensing agency issuing the license has notified the public licensing agency of the county in which the foster home will be located of its intent to issue the license and the 2 public licensing agencies have entered into a written agreement under this paragraph. **A** public licensing agency is not required to enter into any agreement under this paragraph allowing the public licensing agency 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 public licensing agency 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 public licensing agency 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 agrecment.

(d) If the public licensing agency issuing a license under par. (a) 1., 2. or 3. violates the agreement under par. (c), the public licensing agency 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 public licensing agency that issued the license to remove the child from the foster home within 30 days after receipt, by the public licensing agency that issued the license, of notification of the termination of the agreement.

(1m) Each child welfare agency and public licensing agency shall provide the subunit of the department that administers **s.** 48.685 with information about each person who is denied a license for a reason specified in s. 48.685 (4m) (a) 1. to 5.

(1r) At the time of initial licensure and license renewal, the child welfare agency or public licensing agency issuing a license under sub. (Id) 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 public licensing agency or a child welfare agency may, if aggrieved by the failure to issue or renew its license or by revocation of its license, appeal as provided in s. 48.72.

History: 1985 **a.** 176; 1985 a. 332 s. 251 (1); 1989 a. ***336;*** 1993 a. 395,446; 1995 a. 225; 1997 **a.** 27,237: 1999 **a.** 9, 103.

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 S500 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. 8 13.

History: Sup. **Ct.** Order. 67 Wis. 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. or a licensed day care center.

(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) or (5m) (d), 48.432, 48.433, 48.93, 48.981 (7), 938.51, or 938.78 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 the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

(aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record. upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or unbom child by the unborn child's guardian ad litem, unless the agency determines that inspection of the record by the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem 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 the record by the person named in the permission would result in imminent danger to anyone.

(ap) 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 a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child by the unbom child's guardian ad litem, specifically identify the record in the written permission, unless the agency determines that inspection of the record by the person named in the petmission 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 agency, a law enforcement agency, a public school or a private school regarding an individual in the care or legal custody of the agency. **A** social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1). **A** public school that obtains information under this paragraph shall keep the information confidential as required under **s.** 118.125 and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as **is** required of a public school under **s.** 118.125.

(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 or on extended supervision under s. 302.1 13 or 302.1 14.

(g) Paragraph (a) does not prohibit an agency from disclosing infomiation 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 relat-

ing 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.** 3 4 1981 c. 359; 1983 a. 471 **s.** 7; 1985 a. 29 **s.** 3203 (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; 1997 a. 205,207,283,292; 2001 **a.** 38, **69.** 104,109

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 arc 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, dcvcloping 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 child who is present in this state at the time the petition for adoption is filed may be adopted if any of the following criteria are met:

(1) Both of the child's parents are deceased.

(2) The parental rights of both of the child's parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(3) The parental rights of one of the child's parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction and the child's other parent is deceased.

(4) The person filing the petition for adoption is the spouse of the child's parent with whom the child and the child's parent reside and either of the following applies:

(a) The child's other parent is deceased.

(b) The parental rights of the child's other parent with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.

(5) Section 48.839 (3) (b) applies.

(6) The child is being readopted under s. 48.97.

History: 1987 **a.** 383; 1989 a. 161; 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

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 he 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.*** 359s. 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 Wis. 2d 424, 501 N.W.2d 908 (Ct. App. 1993).

48.825 Advertising related to adoption. (1) In this section:

(a) "Advertise" means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television.

(b) "Another jurisdiction" means a state of the United States other than Wisconsin, the District of Columbia. the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States or a federally recognized American Indian tribe or band.

(2) Except as provided in sub. (3), no person may do any of the following:

(a) Advertise for the purpose of finding a child to adopt.

(b) Advertise that the person will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child.

(c) Advertise that the person will place a child for adoption.

(3) This section does not apply to any of the following:

(a) The department, a county department or a child welfare agency licensed under **s.** 48.60 to place children for adoption.

(b) An individual or agency providing adoption information under s. 48.55.

(d) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department. a county department or a child welfare agency licensed under s. 48.60 or in another jurisdiction from an

entity authorized by that jurisdiction to conduct studies of potential adoptive homes.

(e) An individual seeking to place his or her child for adoption.

(4) Nothing in this section prohibits an attorney licensed to practice in this state from advertising his or her availability to practice or provide services relating to the adoption of children.

(5) Any person who violates sub. (2) may be fined not more than $10,000 or imprisoned not more than 9 months or both.

History: 1997 **a. 104;** 1999 a. 9.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

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 **ss.** 48.977 and 48.978, 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 bc 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 or, in a county having a population of 500,000 or more, the department or an agency under contract with the 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: 1997 a. 27,331.

48.832 Transfer of guardianship upon revocation of guardian's license or contract. If the department revokes the license of a county department licensed under **s.** 48.57 (1) (hm) to accept guardianship, or of a child welfare agency licensed under s. 48.61 (5) to accept guardianship, or if the department terminates the contract of a county departnicnt licensed under s. 48.57 (1) (e) 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; 1997 a. 27.

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 placemcnt 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 treahnent 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 of the child 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 stcpparcnt shall file only a petition to tenninate 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; 1997 a. 104.

Concurrent TPR/adoption proceedings under s. 38.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 **days** of filing the petition. In re J.L.F. 168 Wis. 2d 634.484 N.W.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 Wis. 2d 424,501 N.W.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.

(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 cxpccted 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.

(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) Shall hold a hearing within 30 days after the date of filing of the petitions, 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 under **s.** 48.57 (1) (e) or (hm) 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 acknowledged under **s.** 767.62 (1) or a substantially similar law of another state or 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 acknowledged or 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 the report that is submitted under **s.** 48.913 (6). The court shall detennine whether any payments or the conditions specified in any agreement to make payments are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under **s.** 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child 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 dismiss the petitions under subs. (2) and (3) or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1).

(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 **CAKE** 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; 1997 a. **27,104,191.**

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

Cross Reference: See also s. HFS 1.01, Wis. adm. code.

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 Wis. 2d 114,507 N.W.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 rcsidcs 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 dcpartmcnt 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 surcty 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 surcty.

(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 amval 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 recommcndation 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 dcpartmcnt 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 the department, in a county having a population of 500,000 or more, to a county department or to 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; 1997 a. 27.

Cross Reference: See also s. HFS 1.01, **Wis.** adm. code.

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 the department, in a county having a population of 500,000 or more, or a county department or, with the consent of the department in a county having a population of less than 500,000 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 department in a county having a population of 500,000 or more or the county department to conduct an investigation as described under par. (a) (intro.) or may order the department in a county having a population of less than 500,000 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; 1997** a. **27.**

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 or by adoption, 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. 3.54; 1977 c. 418 s. 929 (18); 1981 c. 81: 1997 a. 104.

Once administrative proceedings have commenced under s. 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 Wis. 2d 190.222 N.W.2d 139 (1974).

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 Wis. 2d 424, 501 N.W.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 acknowledged under s. 767.62 (1) or a substantially similar law of another state or 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; 1997 a. 191.

Meaning of "best interests of the child" is discussed. Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865.

48.913 Payments by adoptive or proposed adoptive parents to a birth parent or child or on behalf of a birth parent or child. (1) PAYMENTS ALLOWED. The proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, may pay the actual cost of any of the following:

(a) Preadoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

(b) Post–adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

(c) Maternity clothes for the child's birth mother, not to exceed a reasonable amount.

(d) Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.

(e) Services provided by a licensed child welfare agency in connection with the adoption.

(f) Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child. Medical and hospital care does not include lost wages or living expenses.

(g) Medical and hospital care received by the child.

(h) Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.

(i) Living expenses of the child's birth mother, in an amount not to exceed $1,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

(j) Any investigation ordered under s. 48.837 (4) (c), according to a fee schedule established by the department based on ability to pay.

(k) If the adoption is completed, the cost of any care provided for the child under s. 48.837 (4) (d).

(L) Birthing classes.

(m) A gift to the child's birth mother from the proposed adoptive parents, of no greater than $50 in value.

(2) PAYMENT OF EXPENSES WHEN BIRTH PARENT IS RESIDING IN AKOTHER STATE. Notwithstanding sub. (1), the proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents of a child may pay for an expense of a birth parent of the child or an alleged or presumed father of the child if the birth parent or the alleged or presumed father was residing in another state when the payment was made and when the expense was incurred and if all of the following apply:

(a) The child was placed for adoption in this state in accordance with s. 48.988.

(b) The state in which the birth parent or the alleged or presumed father was residing when the payment was made permits the payment of that expense by the proposed adoptive parents of the child.

(c) A listing of all payments made under this subsection, a copy of the statutory provisions of the state in which the birth parent or the alleged or presumed father was residing when the payments were made that permit those payments to be made by the proposed adoptive parents of the child and a copy of all orders entered in the state in which the birth parent or the alleged or presumed father was residing when the payments were made that relate to the payment of expenses of the birth parent or the alleged or presumed father by the proposed adoptive parents of the child is submitted to the court as follows:

1. With the report under sub. (6), if the parental rights of either birth parent of the child are terminated in this state.

2. With a petition under s. 48.837 (2), if the parental rights of both birth parents of the child are terminated in another state and the child is placed for adoption under s. 48.837 (2).

3. With a petition under s. 48.90, if the parental rights of both parents of the child are terminated in another state and the child is placed for adoption under s. 48.833.

(3) METHOD OF PAYMENT. Any payment under sub. (1) or (2) shall be made directly to the provider of a good or service except that a payment under sub. (1) or (2) may be made to a birth parent of the child or to an alleged or presumed father of the child as reimbursement of an amount previously paid by the birth parent or by the alleged or presumed father if documentation is provided showing that the birth parent or alleged or presumed father has made the previous payment.

(4) OTHER PAYMENTS PROHIBITED. The proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may not make any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child except as provided in subs. (1) and (2).

(5) PAYMENTS AFTER FINALIZATION OF ADOPTION. The adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may make a payment that is authorized under subs. (1) and (2) after finalization of the adoption, if the payment is included in the report under sub. (6) or an amendment to that report tiled with the court.

(6) REPORT TO THE COURT; WHEN REQUIRED. A report containing the information specified in sub. (7) shall be provided to the court at the time of the hearing on the petition for adoptive placement under s. 48.837 (2) or upon the order of the court under s. 48.422 (7) (bm).

(7) REPORT TO THE COURT; CONTENTS REQUIRED. The report required under sub. ***(6)*** shall include a list of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or by a person acting on their behalf to a birth parent of the child, an alleged or presumed father of the child or the child, on behalf of a birth parent of the child, an alleged or presumed father of the child or the child, or to any other person in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents. The report shall be itemized and shall show the goods or services for which payment was made or agreed to be made. The report shall include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any payment from the proposed adoptive parents or a person acting on behalf of the proposed adoptive parents in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

(8) ADOPTION OF FOREIGN CHILDREN AND ADOPTION BY RELATIVES OF THE CHILD. This section does not apply to an adoptive or proposed adoptive parent of a child with whom the child has been placed under s. 48.839 or to an adoptive or proposed adoptive parent of a child who is a relative of the child.

History: 1997 a. 104.

NOTE: 1997 Wis. Act **104,** which affected this section, contains explanatory notes.

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. 1093 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 adopted 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 ss. 854.20 and 854.21.

(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; 1997 a. 35, 188.

A valid adoption of the petitioner hy his aunt would preclude his right to inherit as the son of his natural mother. although he would he entitled to inherit as a nephew. Estate of Komarr, 68 Wis. 2d 473,225 N.W.2d 681 (1975).

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. In re Marriage of Soergel, 154 Wis. 2d 564, 453 N.W.2d 623 (1990).

Adoption of the child of a deceased parent does not terminate the deceased parent's parents' grandparental visitation rights under s. 880.115. Grandparental Visitation of C.G.F., 168 Wis. 2d 62,483 N.W.2d 503 (1992).

Except in tlie 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 Wis. 2d 492. 516 N.W.2d 678 (1994).

Adoption proceedings confer all parental rights on the adoptive parents and therefore resolve all issues relating to the biological grandparents' rights to assert claims for custody and guardianship. Following adoption, a change requires a showing of unfitness in the adoptive parents. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36.584 N.W.2d 195 (Ct. App. 1998).

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, subject to subs. (1m) and (2), 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.

(1m) (a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a relative who has maintained a relationship similar to a parent–child relationship with a child if the relative has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed. set aside or vacated.

(am) Except as provided in par. (b), if a relative who is granted visitation rights with a child under sub. (1) is convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the relative from having visitation with the child on petition of the child or the parent, guardian or legal custodian of the child, or on the court's own motion, and on notice to the relative.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(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; 1999 a. 9.

Grandparents' Visitation Rights Following Adoption: Expanding Traditional Boundaries in Wisconsin. Hintz. 1994 WLR 484.

Grandparent Visitatioii 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. 45.432 (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, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of the court for good cause shown.

(lg) 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 deleting 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: 1997 a. 27, 104,252.
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 excrcisc 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 wclfarc 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. 271,349; 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 rcsidcnts 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 for a child with special needs and only when the department 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.** 1. Except as provided in subd. 3., for support of a child who was in foster care or treatment foster care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the amount of that child's foster care or treatment foster care payment at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

2. Except as provided in subd. 3., for support of a child not in foster care or treatment foster care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the uniform foster care rate in effect at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

3. For support of a child who is defined under rules promulgated by the department under sub. (5) (b) as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty–of–care problems, the initial amount of adoption assistance for maintenance shall be $0.

4. The amount of adoption assistance for maintenance may be changed under an amended agreement under sub. (4) (b) or (c). If an agreement is amended under sub. (4) (b) or (c), the amount of adoption assistance for maintenance shall be the amount specified in the amended agreement but may not exceed the uniform foster care rate that would be applicable to the child if the child wcrc in foster care during the time for which the adoption assistance for maintenance is paid.

(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.

(3m) DURATION. The adoption assistance may be continued after the adoptee reaches the age of 18 if that adoptee is a full–time high school student.

(4) PROCEDURE. (a) Except in extenuating circumstances, as defined by the department by rule promulgated under sub. *(5)* (a), a written agreement to provide adoption assistance shall be made prior to adoption. An agreement to provide adoption assistance may be made only for a child who, at the time of placement for adoption, is in the guardianship of the department or other agency authorized to place children for adoption or in the guardianship of an American Indian tribal agency in this state.

(b) If an agreement to provide adoption assistance is in effect and if the adoptive or proposed adoptive parents of the child who is the subject of the agreement believe there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c), the adoptive or proposed adoptive parents may request that the agreement be amended to increase the amount of adoption assistance for maintenance. If a request is

received under this paragraph, the department shall do all of the following:

1. Determine whether there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c) and whether there has been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

2. If there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, offer to increase the amount of adoption assistance for maintenance based on criteria established by the department by rule promulgated under sub. (5) (d).

3. If an increased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, amend the agreement in writing to specify the increased amount of adoption assistance for maintenance.

(bm) Annually, the department shall review an agreement that has been amended under par. (b) to determine whether the substantial change in circumstances that was the basis for amending the agreement continues to exist. If that substantial change in circumstances continues to exist, the agreement, as amended, shall remain in effect. If that substantial change in circumstances no longer exists, the department shall offer to decrease the amount of adoption assistance for maintenance based on criteria established by the department under sub. (5) (dm). If the decreased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the department shall amend the agreement in writing to specify the decreased amount of adoption assistance for maintenance. If the decreased amount of adoption assistance for maintenance is not agreed to by the adoptive or proposed adoptive parents, the adoptive or proposed adoptive parents may appeal the decision of the department regarding the decrease under the procedure established by the department under sub. (5) (dm).

(c) The department may propose to the adoptive or proposed adoptive parents that an agreement to provide adoption assistance be amended to adjust the amount of adoption assistance for maintenance. If an adjustment in the amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents. the agreement shall be amended in writing to specify the adjusted amount of adoption assistance for maintenance.

(d) An agreement to provide adoption assistance may be amended more than once under par. (b) or (c).

(5) RULES. The department shall promulgate rules necessary to implement this section, which shall include all of the following:

(a) **A** rule defining the extenuating circumstances under which an initial agreement to provide adoption assistance under sub. (4) (a) may be made after adoption. This definition shall include all circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are available to the state if an initial agreement is made after adoption, but may not include circumstances under which federal statutes, regulations or guidelines provide that federal matching fimds for adoption assistance are not available if an initial agreement is made after adoption.

(b) A rule defining a child with special needs, which shall include a child who the department determines has, at the time of placement for adoption, moderate or intensive difficulty-of-care problems, as defined by the department, or who the department determines is, at the time of placement for adoption, at high risk of developing those problems.

(c) A rule defining the substantial change in circumstances under which adoptive or proposed adoptive parents may request that an agreement made under sub. (4) be amended to increase the amount of adoption assistance for maintenance. The definition shall include all of the following:

1. Situations in which a child who was defined as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems has developed those problems.

2. Situations in which a child's difficulty-of-care problems have increased from the moderate level to the intensive level as set forth in the department's schedule of difficulty-of-care levels promulgated by rule.

(d) Rules establishing requirements for submitting a request under sub. (4) (b), criteria for determining the amount of the increase in adoption assistance for maintenance that the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, and the procedure to appeal the decision of the department regarding the request.

(dm) Rules establishing the criteria for determining the amount of the decrease in adoption assistance for maintenance that the department shall offer under sub. (4) (bm) if a substantial change in circumstances no longer exists and the procedure to appeal the decision of the department regarding the decrease. The criteria shall provide that the amount of the decrease offered by the department under sub. (4) (bm) may not result in an amount of adoption assistance for maintenance that is less than the initial amount of adoption assistance for maintenance provided for the child under sub. (3) (a) 1., 2. or 3.

(e) A rule regarding when a child must be photolisted with the adoption information exchange under **s.** 48.55 in order to be eligible for adoption assistance. The rule may not require photolisting under any circumstances in which photolisting is not required by federal statutes, regulations or guidelines as a prerequisite for the state to receive federal matching funds for adoption assistance.

History: 1977 c. **418; 1985** a. **308; 1989** a. 31; **1993** a. 16,446; **1997** a. **308.**
Cross Reference: See **also** ch. HFS 50, Wis. adm. code.

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 a person specified **in s.** 48.57 (3m) (a) 2.

(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 he 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, while assuring that the child's health and safety are the paramount concerns, hut 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, except that the court is not required to find that the agency has made those reasonable

efforts with respect to a parent of the child if any of the circumstances specified in **s.** 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the findings specified in this paragraph on a case–by–case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the guardianship order. A guardianship order that merely references this paragraph without documenting or referencing that specific information in the order or an amended guardianship order that retroactively corrects an earlier guardianship order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(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) or 938.368 **(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 under s. 46.22 or 46.23 or, if the child has been placed pursuant to an order under ch. 938, a county department under **s.** 46.215, 46.22 or 46.23.

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 ofpetition.* A proceeding for the appointment of a guardian for a child under sub. (2) shall be initiated by a petition which shall bc 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), (1Om), (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 arc 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 ofpetition 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 unrepreseuted 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. (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 prcparc but is no more than 30 days after the plea hearing.

3. If the petition is contcstcd 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 not 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 cvidcncc 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 rcport 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 rcport at least 48 hours before the date of the dispositional hearing under par. (fm).

(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 dispositionordering 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) bc 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 undcr 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 Iast 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 infomiation 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; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2. 109.

48.978 Appointment or designation of standby guardian of a child. (1) DEFINITIONS. In this section:

(a) "Attending physician" means a physician licensed undcr ch. 448 who has primary responsibility for the treatment and care of a parent who has filed a petition under sub. (2) (a) or made a written designation under sub. (3) (a) or, if more than one physician has responsibility for the treatment and care of that parent, if a physician is acting on behalf of a physician who has primary responsibility for the treatment and care of that parent or if no physician is responsible for the treatment and care of that parent, "attending physician" means any physician licensed under ch. 448 who is familiar with the medical condition of that parent.

(b) "Debilitation" means a person's chronic and substantial inability, as a result of a physical illness, disease, impairment or injury, to care for his or her child.

(c) "Incapacity" means a person's chronic and substantial inability, as a result of a mental impairment, to care for his or her child.

(2) JUDICIAL APPOINTMENT. (a) *Who may file petition.* 1. **A** parent of a child may file a petition for the judicial appointment of a standby guardian of the person or estate or both of the child under this subsection. **A** parent may include in the petition the nomination of an alternate standby guardian for the court to appoint if the person nominated as standby guardian is unwilling or unable to serve as the child's guardian or if the court determines that appointment of the person nominated as standby guardian as the child's guardian is not in the best interests of the child. Subject to subds. 2. and 3., if a petition is filed under this subdivision, the petition shall be joined by each parent of the child.

2. If a parent of a child cannot with reasonable diligence locate the other parent of the child, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that reasonable diligence, the court may grant the petition.

3. If a parent of a child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship; the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that refusal, unwillingness or inability, the court may grant the petition.

(b) *Contents of petition.* **A** proceeding for the appointment of a standby guardian for a child under this subsection shall be initiated by a petition that shall be entitled "In the interest of .... (child's name), a person under the age of 18" and shall set forth with specificity all of the following:

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 name and address of the person nominated as standby guardian and, if the petitioner is nominating an alternate standby guardian, the name and address of the person nominated as alternate standby guardian.

4. The duties and authority that the petitioner wishes the standby guardian to exercise.

5. **A** statement of whether the duty and authority of the standby guardian are to become effective on the petitioner's incapacity, on the petitioner's death, or on the petitioner's debilitation and consent to the beginning of the duty and authority of the standby guardian, or on whichever occurs first.

6. **A** statement that there is a significant risk that the petitioner will bccome incapacitated or debilitated or die, as applicable, within 2 years after the date on which the petition is filed and the factual basis for that statement.

7. If a parent of the child cannot with reasonable diligence locate the other parent of the child; a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duties and authority of guardianship and who, with reasonable diligence, can be located and a statcnicnt of the efforts made to locate the other parent.

8. If a parent of the child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, a statement that the child has no parent. other than the petitioner, who is willing and able to exercise the duty and authority of guardianship and a statement that the nonpetitioning parent has refiised to join in the petition or has indicated that he or she is unwilling or unable to exercise the duty and authority of guardianship.

9. A description of the child's income and assets, if any.

10. **A** statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.

11. **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. (d) to be served on 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 other parent, if that parent has not joined in the petition and if that parent can with reasonable diligence be located.

f. The persons to whom notice is required to be given under **s.** 48.27 (3) (b) 1.

g. The person who is nominated as the standby guardian of the child in the petition and. if an alternate standby guardian is nominated in the petition, the person who is nominated as the alternate standby guardian.

2. Service shall be made by certified mail at least 7 days before the hearing or by personal service in the same manner as a summons is served under **s.** 801.11 (1) (a) or (b) at least 7 days before the hearing or, if with reasonablc diligence a party specified in subd. 1. cannot be served by mail or by personal or substihited service, service shall bc 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.

(d) *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 that allows rcasonablc 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.

2. If the petition is not contested, the court may immediately proceed to a dispositional hearing under par. (g), unless an adjournment is requested under par. (g).

3. If the petition is contested, the court shall set a date for a fact–finding hearing under par. (e) that allow-s reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(e) *Fact–finding hearing.* The court shall hold a fact–finding hearing on the petition on the date set by the court under par. (d) 3. at which any party may present evidence relevant to any of the following issues:

1. Whether there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. Whether the child has any parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. If a parent cannot be located, whether the petitioner has made diligent efforts to locate that parent.

4. If a parent has refused to join in the petition, whether that refusal is unreasonable.

(f) *Required findings by court.* If the court, at the conclusion of the fact–tinding hearing, makes all of the following findings by clear and convincing evidence, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested under par. (g):

1. That there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. That the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent.

4. That, if a parent has refused to join in the petition, the refusal was unreasonable.

5. That the person nominated as standby guardian is willing and able to act as standby guardian or, if that person is not so willing and able, that the person nominated as alternate standby guardian is willing and able to act as standby guardian.

(g) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified under par. (d) 2. or (e), at which any party may present evidence, including expert testimony, relevant to the disposition. If at the plea hearing or the fact–finding hearing a party requests an adjournment of the dispositional hearing, the court shall set a date for the dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing or fact–finding hearing.

(h) *Dispositional factors.* In determining the appropriate disposition under this par. (j), the best interests of the child shalt bc the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person nominated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person nominated as standby guardian or alternate standby guardian to serve as the child's guardian if the petitioner becomes incapacitated or debilitated or dies.

3. The wishes of the child.

(i) *Appearance by petitioner.* If the petitioner is medically unable to appear at a hearing under par. (d), *(e)* or (g), the court may dispense with the petitioner's appearance, except on the motion of a party and for good cause shown.

(j) *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 person nominated as standby guardian or alternate standby guardian as the child's standby guardian is not in the best interests of the child.

2. A disposition ordering that the person nominated as standby guardian or alternate standby guardian be appointed as the child's standby guardian if the court determines that such an appointment is in the best interests of the child.

(k) *Guardianship order.* A standby guardianship order under par. (j) 2. shall include all of the following:

1. A statement of whether the standby guardianship is a full guardianship under sub. (6) (b) 1. or a limited guardianship under sub. (6) (b) 2.

2, A statement of when the standby guardianship goes into effect, which may be on receipt by the standby guardian of a determination of the petitioner's incapacity, a certificate of the petitioner's death, or a determination of the petitioner's debilitation and the petitioner's written consent under par. (L) 3. that the standby guardianship go into effect.

(L) *Commencement of duty nnd authority of court-uppointed standby guardian.* 1. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of the certificate of the petitioner's death.

3. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's debilitation and consent to the standby guardianship going into effect, the duty and authority of a standby guardian shall begin on the receipt by the standby guardian of a determination of debilitation under sub. (4) and a written consent to the beginning of that duty and authority signed by the petitioner in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If the petitioner is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the petitioner and at the direction of the petitioner, in the presence of the petitioner and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

4. The standby guardian shall file the determination of incapacity received undcr subd. 1., the ccrtificate of death received under subd. 2., or the determination of debilitation and written consent received under subd. 3., whichever is applicable, with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination, ccrtificate, or determination and written consent. If the standby guardian fails to file that determination, ccrtificatc, or determination and written consent with that court within those 90 days. the court may rescind the guardianship order.

(m) *Suspension of duty and authority of court–appointed standby guardian.* 1. The duty and authority of a standby guardian appointed under par. (j) 2. shall be suspended on the rcccipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. The standby guardian shall file the determination of recovery or remission rcceivcd under subd. 1. with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

3. The duty and authority of a standby guardian that are suspcnded under subd. 1. shall begin again as provided in par. (L).

(n) ***Rescission of standby guardianship.*** 1. If at any time before the duty and authority of a standby guardian appointed under par. (j) 2. begin, the court finds that the findings of the court under par. (f) no longer apply or determines that the determination of the court undcr par. (j) 2. no longer applies, the court may rescind the guardianship order.

2. A person who is appointed as a standby guardian under par. (j) 2. may, at any time before his or her duty and authority as a standby guardian begin, renounce ihat appointment by executing a written renunciation, filing the renunciation with the court that issued the guardianship order and notifying the petitioner in writing of the renunciation. On compliance with this subdivision, the court shall rescind the guardianship order.

3. A person who is appointed as a standby guardian under par. (j) 2. may, at any time after his or her duty and authority as standby guardian begin, resign that appointment be executing a written resignation, filing the resignation with the court that issued the guardianship order and notifying the petitioner, if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

4. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time before the duty and authority of the standby guardian begin by executing a written revocation, filing the revocation with the court that entered the guardianship order

and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court shall rescind the guardianship order.

5. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time after the duty and authority of the standby guardian begin by executing a written revocation, filing the written revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(3) PARENTAL DESIGNATION. (a) ***written designation.*** A parent may designate a standby guardian for his or her child by means of a written designation signed by the parent in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If a parent is physically unable to sign that written designation, another person 18 years of age or over who is not the standby guardian may sign the written designation on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

(b) *Contents of written designation; form.* 1. A written designation of a standby guardian shall identify the parent who is making the designation, the child who is the subject of the standby guardianship and the person who is designated to be the standby guardian. The written designation shall also state the duties and authority that the parent wishes the standby guardian to exercise and shall indicate that the parent intends for the duty and authority of standby guardian to begin on the parent's incapacity, death, or debilitation and consent under par. (c) 3. to the beginning of the duty and authority of the standby guardian, or on whichever occurs first. A parent may designate an alternate standby guardian in the same written designation and in the same manner as the parent designates the standby guardian.

2. **A** written designation of a standby guardian complies with this subsection if the written designation substantially conforms to the following form:

DESIGNATION OF STANDBY GUARDIAN

I, ... (name and address of parent), being of sound mind, do hereby designate .... (name and address of standby guardian) as standby guardian of the person and estate of my child(ren) .... (name(s), birth date(s) and address(es) of child(ren)).

(You may, if you wish, provide that the duty and authority of the standby guardian shall extend only to the person, or only to the estate, of your child(ren), by crossing out "person and" or "and estate", whichever is inapplicable, above.)

The duty and authority of the standby guardian shall begin on one of the following events, whichever occurs first:

1. I die.

2. My doctor determines that I am mentally incapacitated, and thus unable to care for my child(ren).

3. My doctor determines that I am physically debilitated, and thus unable to care for my child(ren), and I consent in writing, before 2 witnesses, to the standby guardian's duty and authority taking effect.

If the person I designate above is unwilling or unable to act as standby guardian for my child(ren), I hereby designate .... (namc and address of alternate standby guardian) as standby guardian for my child(ren).

I also understand that the duty and authority of the standby guardian designated above will end 180 days after the day on which that duty and authority begin if the standby guardian docs not petition the court within those 180 days for an order appointing him or her as standby guardian.

I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship, that I may revoke the standby guardianship at any time before the standby guardianship begins, that I may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on my recovery or remission from my incapacity or debilitation.

Signature.... Date ....

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:

(print) Name ... Date ....

Address ....

Signature ....

Witness No. 2:

(print) Name .... Date ....

Address ....

Signature ...

STATEMENT OF STANDBY GUARDIAN
AND ALTERNATE STANDBY GUARDIAN

I .... (name and address of standby guardian), and I, ... (name and address of alternate standby guardian), understand that .... (name of parent) has designated me to be the standby guardian or alternate standby guardian of the person and estate (cross out "person and" or "and estate", if inapplicable) of his or her child(ren) if he or she dies, becomes mentally incapacitated, or becomes physically debilitated and consents, to my duty and authority taking effect. I hereby declare that I am willing and able to undertake the duty and authority of standby guardianship and I understand that within 180 days after that duty and authority begin I must petition the court for an order appointing me as standby guardian. I further understand that .... (name of parent) retains full parental rights over his or her child(ren) even after the beginning of the standby guardianship, that he or she may revoke the standby guardianship at any time before the standby guardianship begins, that he or she may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on his or her recovery or remission from his or her incapacity or debilitation.

Standby guardian's signature ... Date ....

Address ....

Alternate standby guardian' signature .... Date ....

Address ....

3. **A** written designation of a standby guardian may also contain a consent to that designation that substantially conforms to the following form and that shall be completed if the child's other parent can be located:

CONSENT TO DESIGNATION OF STANDBY GUARDIAN

I, ... (name and address of other parent), being of sound mind, do hereby consent to the designation by .... (name of designating parent) of .... (name of standby guardian) as standby guardian, and of .... (name of alternate standby guardian) as alternate standby guardian, of the person and estate (cross out "person and" or "and estate", if inapplicable) of my child(ren) .... (name(s), birth date(s) and address(es) of child(ren)).

I also consent to the terms and conditions of the standby guardianship stated above and I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship and that I may revoke my consent to the standby guardianship at any time.

Signature .... Date ....

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No, 1:

(print) Name .... Date ....

Address ....

Signature ....

Witness No. 2:

(print) Name .... Date ....

Address ....

Signature ....

(c) *Commencement of duty and authority of designated standby guardian.* 1. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a certificate of the parent's death.

3. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent becoming debilitated and consenting to the beginning of the standby guardianship, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of debilitation under sub. (4) and a copy of the parent's written consent to the beginning of that duty and authority signed by the parent in the presence of 2 witnesses, neither of whom may be the standby guardian, and by the standby guardian. If the parent is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses, neither of whom may be the standby guardian.

4. Subject to par. (d) 2., the standby guardian shall file a petition under par. (e) for judicial appointment as standby guardian of the child within 180 days after the date on which the standby guardianship begins. If the standby guardian fails to file that petition within those 180 days, the standby guardian's duty and authority shall end 180 days after the date on which the standby guardianship began. If the standby guardian files the petition after the expiration of those 180 days, the duty and authority of the standby guardian shall begin again on the date on which the petition is filed.

(d) *Suspension of duty and authority of designated standby guardian.* 1. The duty and authority of a standby guardian designated under par. (a) shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. *(5)*.

2. If the standby guardian receives a determination of recovery or remission under subd. 1. before the standby guardian files the petition under par. (e), the standby guardian need not file the petition under par. (e).

3. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian files the petition under par. (e), but before the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court with which the petition is filed by the time of the next hearing on the petition or within 7 days after the date on which the standby guardian receives that determination, whichever is sooner. On compliance with this subdivision, the court shall dismiss the petition. If the standby guardian fails to file that determination with that court within those 7 days, the court may rescind the guardianship.

4. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

5. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (c).

(e) *Petition for judicial appointment.* A petition for judicial appointment as standby guardian of a child under this subsection shall be in the same form as a petition under sub. (2) (b) and shall set forth with specificity the information specified in sub. (2) (b) 1. to 4. and 7. to 11. The petition shall also contain a statement that the parent has become incapacitated, has died, or has become debilitated and has consented to the beginning of the duty and authority of the standby guardian. In addition, the petition shall be accompanied by the following documentation:

1. The written designation under par. (a) signed or consented to by each parent of the child or, if a parent cannot with reasonable diligence be located or has refused to consent to the designation, the written designation under par. (a) signed by one parent and a statement of the efforts made to find the other parent or of the fact that the other parent has refused to consent to the designation.

2. **A** copy of the determination of incapacity received under par. **(c)** 1., the Certificate of death received under par. (c) 2. or the determination of debilitation and written consent received under par. (c) 3.

3. If the petition is filed by a person who has been designated as an alternate standby guardian, a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian and the factual basis for that statement.

(f) *Procedure for judicial* ***appointment.*** 1. The petitioner shall cause the petition and notice of the time and place of the plea hearing under subd. 2. to be served on all of the persons specified in sub. (2) (c) 1. a. to f. and on the parent who has made the written designation under par. (a), if living. Service shall be made in the manner provided in sub. (2) (c) ***2.***

2. The court shall hold a plea hearing, a fact–finding hearing and a dispositional hearing in the manner provided in sub. ***(2)*** (d) to (g) and shall enter a dispositional order as provided in sub. (2) (j) and **(k)** 1., except that at the fact–finding hearing any party may present evidence relevant to the issues specified in par. (g), and at the conclusion of that hearing the court shall immediately proceed to a dispositional hearing, unless an adjournment is requested, if the court finds by clear and convincing evidence that the conditions specified in par. (g) have been met.

(g) *Required findings by court.* The court shall appoint a person to be a standby guardian under this subsection if, after making the following findings by clear and convincing evidence, the court determines that the appointment is in the best interests of the child:

1. That the person was designated as standby guardian in accordance with pars. (a) and (b).

2. That the standby guardian has received a determination of incapacity, a death certificate, or a determination of debilitation and written consent, as provided in par. (c) 1., ***2.*** or 3., whichever is applicable.

3. That the child has no parent who is willing and able to exercise the duty and authority of guardianship.

4. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent or, if a parent has refused to consent to the designation of the standby guardian, the consent was unreasonably withheld.

5. That, if the petitioner is a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian.

(h) *Dispositional factors.* In determining the appropriate disposition under par. (g), 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 all of the following:

1. Whether the person designated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person designated as standby guardian or alternate standby guardian to serve as the child's guardian.

3. The wishes of the child.

(i) *Appearance by parent.* If the parent who has made a written designation under par. (a) is medically unable to appear at a hearing specified in par. (f) 2., the court may dispense with the parent's appearance, except on the motion of a party and for good cause shown.

(j) *Revocation by parent.* 1. A parent who has made a written designation under par. (a) may, at any time before the filing of a petition under par. (e), revoke a standby guardianship created under this subsection by executing a written revocation and notifying the standby guardian in writing of the revocation, making a subsequent written designation under par. (a) or verbally revoking the standby guardianship in the presence of 2 witnesses.

2. After a petition under par. (e) has been filed but before the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court with which the petition has been filed and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may dismiss the petition and rescind the guardianship if the court determines that dismissal of the petition and rescission of the guardianship are in the best interests of the child.

3. After the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(k) *Renunciation of designation.* 1. A pcrson whom a parent has designated as a standby guardian under par. (a) may, at any time before the filing of a petition under par. (e), renounce that designation by executing a written renunciation and notifying the parent, if living, in writing of that renunciation.

2. After a petition under par. (e) has been filed, but before the standby guardian has been judicially appointed under par. (g), a pcrson whom a parcnt has designated as a standby guardian under par. (a) may renounce that designation by executing a written renunciation, filing the renunciation with the court with which the petition has been filed and notifying the parcnt, if living, in writing of that renunciation. On compliance with this subdivision, the court may accept the renunciation and rescind the guardianship order if the court finds that the renunciation and rescission are in the best interests of the child.

3. A person who has been judicially appointed as a standby guardian under par. (g) may, at any time after that appointment, resign that appointment by executing a written resignation, filing the resignation with the court that entered the guardianship order and notifying the parent who designated the person as a standby guardian under par. (a), if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

(4) DETERMINATION OF INCAPACITY OR DEBILITATION. (a) *In general.* 1. A determination of incapacity or debilitation under this section shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the cause and nature of the parent's incapacity or debilitation and the extent and probable duration of the incapacity or debilitation.

2. If a standby guardian's identity is known to an attending physician making a determination of incapacity or debilitation, the attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's incapacity or debilitation for purposes of this section.

(c) *Information to be provided to parent.* On receipt of a determination of a parent's incapacity, a standby guardian shall inform the parent of all of the following, if the parent is able to comprehend that information:

1. That a determination of incapacity has been made and, as a result, the duty and authority of the standby guardian have begun.

2. That the parcnt may revoke the standby guardianship in accordance with sub. (2) (n) 5. or (3) (j) 1., 2. or 3., whichever is applicable.

(5) DETERMINATION OF RECOVERY OR REMISSION. (a) *In general.* 1. A determination that a parent has recovered or is in remission from his or her incapacity or debilitation shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the extent and probable duration of the recovery or remission.

2. If a standby guardian's identity is known to an attending physician making a determination of recovery or remission, the attending physician shall provide a copy of the deterniination of recovery or remission to the standby guardian.

(bj *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's recovery or remission for purposes of this section.

(6) PARENTAL RIGHTS; DUTY AND AUTHORITY OF STANDBY GCARDIAN. (a) *Parental rights.* The beginning of the duty and authority of a standby guardian under sub. (2) or (3) does not, in itself, divest a parcnt of any parental rights.

(b) *Duties and authority of guardian.* 1. Unless limited under subd. 2., a standby guardian appointed under sub. (2) or designated under sub. (3) shall have all of the duties and authority specified in s. 48.023.

2. The court may order or a parent may provide that the duties and authority of a standby guardian appointed under sub. (2) or designated under sub. (3) be limited. The duties and authority of a limited standby guardian shall be as specified by the order of appointment under sub. (2) (j) 2. or the written designation under sub. (3) (a). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited standby guardian appointed under sub. (2) or designated under sub. (3) to the extent those provisions are relevant to the duties or authority of the limited standby guardian, except as limited by the order of appointment or written designation.

(7) RELATIONSHIP TO CH. 880. (a) Except when a different right, remedy or procedure is provided under this section, the rights, remedies and procedures provided in ch. 880 shall govern a standby guardianship created under this section.

(b) This section docs not abridge the duties or authority of a guardian appointed under ch. 880.

(c) Nothing in this section prohibits an individual from petitioning a court for the appointment of a guardian under ch. 880.

History: 1997 a. 334.

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 departnient 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 and abused unborn children. (1) DEFINITIONS. In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under 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, greatgrandparent, 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 employee of a residential facility or residential care center for children and youth 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 cxcrcises 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.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35(1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 *(5)*; conditional release under s. 971.17; supervised release under s. 980.06 or 980.08: participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538: or any othcr placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections. the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(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.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation 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 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, greatgrandparent, 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 stepaunt.

(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 or unborn child named in a report or record as any 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.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn 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) [, group home, as described in **s.** 48.625 (1m,] Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person 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):

NOTE: The bracketed language was inserted into s. 48.981 (2) by 2001 Wi. Act 69, but was not taken into account by the treatment of s. 48.981 (2) by 2001 Wis. Act 103. Corrective legislation to move the language to its correct location in subd. 18. is pending.

1. **A** physician.
2. A coroner.
3. **A** medical examiner.
4. **A** nurse.
5. A dentist.
6. A chiropractor.
7. **An** optometrist.
8. An acupuncturist.
9. A medical or mental health nrofessional not otherwise specified in this paragraph.
10. A social worker.
11. A marriage and family therapist.
12. A professional counselor.
13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141 (I) (d).
14. A school teacher.
15. A school administrator
16. A school counselor.
17. A mediator under **s.** 767.11.
18. A child–care worker in a day care center [, group home, as described in **s.** 48.625 (1m),] or residential care center for children and youth.

NOTE: The bracketed language was inserted into s. 48.981 (2) by 2001 Wis. Act 69, but was not taken into account by the treatment of s. 48.981 (2) by 2001 Wis. Act 103. Corrective legislation to move the language to its correct location in subd. 18. is pending.

19. A day care provider.
20. An alcohol or other drug abuse counselor.
21. A member of the treatment staff employed by or working under contract with a county department under **s.** 46.23, 51.42, or 51.437 or a residential care center for children and youth.
22. A physical therapist.

22m. A physical therapist assistant.

NOTE: 2001 Wis. Act 70 creates the term "physical therapist assistant" and provides for the licensing of physical therapist assistants effective 4–1–04.

23. An occupational therapist.
24. A dietitian.
25. **A** speech–language pathologist.
26. An audiologist.
27. An emergency medical technician.
28. **A** first responder.
29. **A** police or law enforcement officer.

(b) A court–appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under **s.** 48.236 (3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(c) Any person not otherwise specified in par. (a) or (b), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unbom child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) 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, as defined in **s.** 253.07 (1) (b), 1995 stats., 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 pemianently 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 undcr 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.* 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the 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 of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all cases reported to it. The county department, department, or licensed child welfare agency may require that a subsequent report be made in writing.

3. **A** county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in **s.** 48.02 (1) (b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in **s.** 48.02 (1) (a), (am), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to **(9,** the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(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 the health or safety of a child or of an unborn child 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 health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or S. 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.

2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to **(9,** that the sheriff or police department will routinely refer 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 Ho-Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child. when born, may bc eligible for affiliation, 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 with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child or unborn 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 or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child 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 child 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 investigation is of a report of child abuse or neglect or threatened child 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 agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to detennine 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 employee of the county department or, in a county having a population of 500.000 or more, the department or a licensed child welfare agency under contract with the 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 employee 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 employee 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.

2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under **s.** 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the

unborn child into custody under **s.** 48.08 (2), 48.19 (I) (cm) or 48.193 (I) (c) and deliver the expectant mother to the intake worker under **s.** 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the 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 or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfarc agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfarc agency 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 or that a petition be filed under **s.** 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500.000 or more, the department or a licensed child welfare agency under contract with the 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 or, in a county having a population of 500,000 or more. the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency 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 or to any expectant mother of an unborn child. The agcncy shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more. the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child wclfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the deterniination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under **s.** 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

6. The agency 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 wclfare of the child or unborn 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, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. ***An*** 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 or unborn 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 agency may petition the court ex parte for an order prohibiting that disclosure and, if the 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 or unborn child.

7. The county department or, in a county having a population of 500,000 or more: the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. This information shall be used by the department to monitor services provided by county departments or licensed child wclfarc agencies under contract with county departments or the department. The department shall use non-identifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) Contract with licensed child wclfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the 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 dcpartmcnt under **s.** 51.42 or 51.437 or by a child welfare agency who **is** working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 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 the child welfare 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 or of an expectant mother 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 or for abusing an unborn 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; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the rcport 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 an agency 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 an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn 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 infomiation 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 or unborn child who is the subject of the report.

2. Appropriate staff of an agency 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 or the expectant mother of an unborn child, 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 or a person having physical custody of the expectant mother of an unborn 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 employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. **A** multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23. 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

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 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 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 or abuse of the unborn 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 and unborn 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 rcport or

record or abuse of the unborn 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, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

1Im. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 1Om. or 10r., of an Indian child in proceedings under subd. 1Om. or 1Or. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court–appointed special advocate designated under s. 48.236 (1) or person employed by a court–appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 45.07 (5), to the extent necessary for the court--appointed special advocate to perform the advocacy services specified in s. 48.236 (3) that the court–appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

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 under s. 48.57 (1) (e) or (hm) or a 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 or, in a county having a population of 500.000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a 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 rcport or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(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 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any infomiation 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 infonnation that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency may disclose to the general public a written summary of the information specified in subd. 2. relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical Condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the perforniance of the official duties of the officer or agency. that the suspected abuse or neglect of the child has been invcstigatcd under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd. 2.

2. If an agency is permitted to disclose inforniation under subd. 1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency undcr sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offcrcd or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

3. An agency may not disclose any of the information described in subd. 2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd. 2. under the circumstances specified in subd. 1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing *to* take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd. **2.** under the circumstances specified in subd. 1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(c) **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, the county departments, and a licensed child welfare agcncy under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the 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 and of unborn child abuse, 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 and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(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 and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse 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, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse,

(d) 1. Each agcncy staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). 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 agency 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 and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse 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 agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 Wis. 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, 772,318,395: 443, 446, 491; 1995 a. 275.289: 369,356; 1997 a. 27. 114292,293; 1999 a. 9, 20. 32, 56, 84, 149, 192; 2001 a. 16, 38, 59. 69, 70, 103, 105.

Even if the authority for a warrantless search can be inferred from ch. **48,** those provisions cannot supercede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Boggess, 115 Wis. 2d 443,340 N.W.2d 516 (1983).

Section 48.981. 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 Wis. 2d 266,400 N.W.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. Bchnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of **good** faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional." Drake v. Huber, 218 Wis. 2d 672,582 N.W.2d 74 (Ct. App. 1998).

This section provides no basis for civil liability against a person who may, but is not required to. report abuse. Gritzner v. Michael R. 2000 WI 68,235 Wis. 2d 781, 611 N.W.2d 906.

To "disclose" information under sub. (7). the recipient must have been previously unaware of the information at the time of the communication. The state has the burden to prove beyond a reasonable doubt that the disclosure took place. Sub. (7) is a strict liability statute; intent is not an element of a violation. State v. Polashek, 2002 WI 74, ___ Wis. 2d ___, 646 N.W.2d 330.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section is discussed. 76 Atty. Gen. 286.

Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Atty. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staffmembers may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on–site interview on notification of the child's parents. 79 Atty. Gen. 48.

Members of a social services board in a county with a county executive or a county administrdtor may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutoty duties. 79 Atty. Gen. 212.

A district attoniey 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.

County departments have authority to transport a child to a county–recognized child advocacy center for the **purpose** of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3–98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to deteimine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie. 480 U.S. 39 (1987).

This section docs 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 arc 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, other than moneys received under s. 341.14 (6r) (b) 6., may be credited to the appropriation accounts under s. 20.433 (1) (i) or (q). Interest earned on moneys received under s. 341.14 (6r) (b) 6. may be credited to the appropriation account under s. 20.433 (1) (q).

(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 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.

(2e) NONSTOCK, NONPROFIT CORPORATION. (a) The board may organize and maintain a nonstoek, nonprofit corporation under ch. 181 for the exclusive purpose of soliciting and accepting contributions, grants, gifts and bequests for the children's trust fund. Any contributions. grants, gifts or bequests accepted by the corporation shall be deposited in the children's trust fund and, in accordance with the wishes of the donor, shall be used for any of the purposes specified in sub. (2m) or shall continue to accumulate in the children's trust fund pursuant to s. 25.67 *(2)*.

(b) The board shall enter into a contract with any corporation organized and maintained under par. (a). The contract shall provide that the board may make use of the services of the corporation and that the board may provide administrative services to the corporation. The type and scope of any administrative services provided by the board to the corporation and the board employees assigned to perforni the services shall be determined by the board. The corporation may neither employ staff nor engage in political activities.

(c) The corporation under par. (a) shall donate any real property to the state within 5 years after acquiring the property unless holding the property for more than 5 years is consistent with sound business and financial practices and is approved by the joint committee on finance.

(d) The board, the department of administration, the legislative fiscal bureau, the legislative audit bureau and the appropriate committee of each house of the legislature, as determined by the presiding officer, may examine all records of the corporation.

(e) The board of directors of any corporation established under this subsection shall consist of 5 members, including the chairperson of the board and 4 members of the board, elected by the board, of which one shall be a legislator. No 2 members of the board of directors may be from the same category of board members under s. 15.195 (4) (a) to (g).

(f) Any corporation established under this subsection shall be organized so that contributions to it will be deductible from adjusted gross income under section 170 of the Internal Revenue Code, as defined under s. 71.01 (6), and so that the corporation will be exempt from taxation under section 501 of the Internal Revenue Code, as defined under s. 71.22 (4), and under s. 71.26 (1) (a).

(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) and appropriated under s. 20.433 (1) (q), 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 (q).

(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 $30,000.

(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, pcrinatal 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 (q), 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) (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 $150,000 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. For organizations applying for grants for the first time on or after July 1, 1998, the board shall give favorable consideration in awarding grants to organizations for programs in communities where home visitation programs that provide in-home visitation services to parents with newborn infants are in existence or are in development and, if grants are awarded, shall require programs supported by grants to maximize coordination with these home visitation programs. 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 becotne 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 interven-

tion. 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; 1997 a. 27, 78, 252, 293; 1999 a. 9; 2001 a. 16.

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 5273,700 in each fiscal year 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 and for child abuse and neglect and unborn child abuse independent investigations.

(2) COMMUNITY SOCIAL AND MENTAL HYGIENE SERVICES. From the appropriation under s. 20.435 *(7)* (o), the department shall distribute not more than $3,964,400 in each fiscal year of the moneys received under 42 USC 620 to 626 to county dcpartmcnts 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, for services to the expectant mothers of unborn children and for family--based child welfare services.

(3) COMMUNITY YOUTH AND FAMILY AIDS. From the appropriation account under s. 20.410 (3) (ko), 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.

(5) MILWAUKEE CHILD WELFARE AIDS. Of the amounts received under 42 USC 620 to 626 and credited to the appropriation account under s. 20.435 (3) (nL), the department shall transfer $58,600 in fiscal year 2001–02 and $66,800 in fiscal year 2002--03 to the appropriation account under s. 20.435 (3) (kw) and shall expend those moneys to provide services to children and families under s. 48.48 (17).

History: 1987 a. 27; 1989 a. 31,107: 1991 a. 39,269; 1993 a. **16,446:** 1995 a. 27: 1997 a. 27,292; 1999 a. 9; 2001 a. 16.

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: 1971 c. 353 s. 94: Stats. 1977 s. 48.981; 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, in a child–caring agency, or in a residential care center for children and youth, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or 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 ernployccc 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 statc.

(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 statc 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 addrcsscs 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 evidcncc 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 send-

ing agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive theref?-om, 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 ofjurisdiction by a receiving state sufficicnt 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 CHILDREX. 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 otherjurisdiction 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?actingjointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out niore 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 the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or 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 cffcct as to the state affected as to all scvcrablc matters.

(11) Financial responsibility for any cliild 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, instihitions 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 iurisdiction as provided in sub. (5).

History: 1977 c. 354; Stats. 1977 s. iS.99; 1977 c. 447; Stats. 1977 s. 48.938; 1981 c. 390: 1933 a. 189; 1985 a. 29 s. 3202 (23); 1987 a. 403; 1993 a. 326; 1997 a. 104; 1999 a. 32; 2001 a. 59.

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).

48.9985 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 residence, 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.

CHAPTER 51

STATE ALCOHOL, DRUG ABUSE, DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH ACT

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Cross–reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50. 51. 55 and 58.

51.001 Legislative policy. (1) It is the policy of the state to assure the provision of a full range of treatment and rehabilitation services in the state for all mental disorders and dcvclopmental disabilities and for mental illness, alcoholism and other drug abuse. There shall be a unified system of prevention of such conditions and provision of services which will assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs: and movement through all treatment components to assure continuity of care, within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(2) To protect personal liberties, no person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.

History: 1975 c. 430; 1995 a. 92.

51.01 Definitions. As used in this chapter. except where otherwise expressly provided:

(1) "Alcoholic" means a person who is suffering from alcoholism.

(1m) "Alcoholism" is a disease which is characterized by the dependency of a person on the drug alcohol, to the extent that the person's health is substantially impaired or endangered or his or her social or economic functioning is substantially disrupted.

(2) "Approved treatment facility" means any publicly or privately operated treatment facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons.

(2g) (a) "Brain injury" means any injury to the brain, regardless of age at onset, whether mechanical or infectious in origin, including brain trauma, brain damage and traumatic head injury, the results of which arc expected to continue indefinitely, which constitutes a substantial handicap to the individual, and which directly results in any 2 or more of the following:

1. Attention impairment.
2. Cognition impairment.
3. Language impairment.
4. Memory impairment.
5. Conduct disorder.
6. Motor disorder.
7. Any other neurological dysfunction

(am) "Brain injury" includes any injury to the brain under par. (a) that is vascular in origin if received by a person prior to his or her attaining the age of 22 years.

(b) "Brain injury" does not include alcoholism, Alzheimer's disease as specified under s. 46.87 (1) (a) or the infirmities of aging as specified under s. 55.01 (3).

(3) "Center for the developmentally disabled" means any facility which is operated by the department and which provides services including, but not limited to, 24–hour treatment, consultation, training and education for developmentally disabled persons.

(3g) "Chronic mental illness" means a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long–term treatment and support and which may be of lifelong duration. "Chronic mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories. but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence.

(3n) "Community mental health program" means a program to provide community--based outpatient mental health services

that is operated by or under contract with a county department of community programs or that requests payment for the services under the medical assistance program or under benefits required under s. 632.89 **(2).**

(3s) "Community support program" means a coordinated care and treatment system which provides a network of services through an identified treatment program and staff to ensure ongoing therapeutic involvement and individualized treatment in the community for persons with chronic mental illness.

(4) "Conditional transfer" means a transfer of a patient or resident to a less restrictive environment for treatment which is made subject to conditions imposed for the benefit of the patient or resident.

(5) (a) "Developmental disability" means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader–Willi syndrome, mental retardation, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility which is primarily caused by the process of aging or the infirmities of aging.

(b) "Developmental disability", for purposes of involuntary commitment, does not include cerebral palsy or epilepsy.

(6) "Director" means the person in charge of a state treatment facility, state or local treatment center. or approved private facility.

(7) "Discharge" of a patient who is under involuntary commitment orders means a termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. The "discharge" of a patient who is voluntarily admitted to a treatment program or facility means a termination of treatment obligations between the patient and the treatment program or facility.

(8) "Drug dependent" means a person who uses one or more drugs to the extent that the person's health is substantially impaired or his or her social or economic functioning is substantially disrupted.

(9) "Hospital" has the meaning given under s. 50.33.

(10) "Inpatient facility" means a public or private hospital or unit of a hospital which has as its primary purpose the diagnosis, treatment and rehabilitation of mental illness, developmental disability, alcoholism or drug abuse and which provides 24–hour care.

(11) "Law enforcement officer" means any person who by virtue of the person's office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes while acting within the scope of the person's authority.

(12) "Mental health institute" means any institution operated by the department for specialized psychiatric services, research, education, and which is responsible for consultation with community programs for education and quality of care.

(13) (a) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

(b) "Mental illness", for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

(14) "Residence", "legal residency" or "county of residence" has the meaning given under s. 49.001 (6).

(14k) "Secured child caring institution" has the meaning given in s. 938.02 (15g).

(14m) "Secured correctional facility" has the meaning given in s. 938.02 (15m).

(14p) "Secured group home" has the meaning given in s. 938.02 (15p).

(15) "State treatment facility" means any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes.

(16) "Transfer" means the movement of a patient or resident between approved treatment facilities or to or from an approved treatment facility and the community.

(17) "Treatment" means those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

(18) "Treatment director" means the person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.

(19) "Treatment facility'' means any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs.

History: 1975 *c.* 430 ss. 11, 81; 1977 c. 26; 1977 *c.* 203 s. 106: 1977 c. 428: 1981 *c.* 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9.

"Treatment" does not include habilitation. **In** Matter of Athans. 107 Wis. 2d 331, 320 N.W.2d 30 (Ct. **App.** 1982).

51.02 Council on mental health. (1) The council on mental health shall have the following duties:

(a) Advise the department, the legislature and the governor on the use of state and federal resources and on the provision and administration of programs for persons who are mentally ill or who have other mental health problems, for groups who are not adequately served by the mental health system, for the prevention of mental health problems and for other mental health related purposes.

(b) Provide recommendations to the department on the expenditure of federal funds received under the community mental health block grant under 42 USC 300x to 300x–9 and participate in the development of and monitor and evaluate the implementation of, the community mental health block grant plan.

(c) Review all departmental plans for services affecting persons with mental illness and monitor the implementation of the plans.

(d) Serve as an advocate for persons with mental illness.

(f) Consult with the department in the development of a model community mental health plan under s. 51.42 **(7)** (a) 9., and review and advise the department on community mental health plans submitted by counties under s. 51.42 (3) (ar) 5.

(g) Promote the development and administration of a delivery system for community mental health services that is sensitive to the needs of consumers of the services.

(h) Review and comment on the human services and community programs board member training curriculum developed by the department under s. 51.42 (7) (a) 3m.

(2) The secretary shall submit all departmental plans affecting persons with mental illness to the council for its review. The council shall provide its recommendations to the secretary within such time as the secretary may require.

History: 1983 a. 439; 1987 a. 186: 1993 a. 445; 1995 a. 27; 2001 a. 16.

51.03 Department; powers and duties. (1g) In this section:

(a) "Early intervention" means action to hinder or alter a person's mental disorder or abuse of alcohol or other drugs in order to reduce the duration of early symptoms or to reduce the duration or severity of mental illness or alcohol or other drug abuse that may result.

(b) "Individualized service planning" means a process under which a person with mental illness or who abuses alcohol or other

drugs and, if a child, his or her family, receives information, education and skills to enable the person to participate mutually and creatively with his or her mental health or alcohol or other drug abuse service provider in identifying his or her personal goals and developing his or her assessment, crisis protocol, treatment and treatment plan. "Individualized service planning" is tailored to the person and is based on his or her strengths, abilities and needs.

(c) "Prevention" means action to reduce the instance, delay the onset or lessen the severity of mental disorder, before the disorders may progress to mental illness, by reducing risk factors for, enhancing protections against and promptly treating early warning signs of mental disorder.

(d) "Recovery" means the process of a person's growth and improvement, despite a history of mental illness or alcohol or other drug abuse, in attitudes, feelings, values, goals, skills and behavior and is measured by a decrease in dysfunctional symptoms and an increase in maintaining the person's highest level of health, wellness, stability, self–determination and self–sufficiency.

(e) "Stigma" means disqualification from social acceptance, derogation, marginalization and ostracism encountered by persons with mental illness or persons who abuse alcohol or other drugs as the result of societal negative attitudes, feelings, perceptions, representations and acts of discrimination.

(1r) The department through its authorized agents may visit or investigate any treatment facility to which persons are admitted or committed under this chapter.

(2) No later than 14 days after the date of a death reported under s. 51.64 (2) (a), the department shall investigate the death.

(3) (a) Beginning on September 1, 1996, the department shall collect and analyze infomation in this state on each of the following:

1. The number of commitments initiated under s. 51.15 or 51.20 (1).

2. The number of commitments ordered under s. 51.20 (13).

3. The number of, cost of and paying sources for days of inpatient mental health treatment that result from the commitments initiated under subd. 1. or ordered under subd. 2.

5. The number of persons who are receiving care and treatment under community support programs voluntarily or under commitments ordered under s. 51.20 (13).

6. The number of persons for whom guardians are appointed under s. 880.33 (4m).

(b) By April 1, 1997, and annually by that date for 3 years thereafter, the department shall submit a report to the legislature under s. 13.172 (2) on the information collected under par. (a).

(4) Within the limits of available state and federal funds, the department may do all of the following:

(a) Promote the creation of coalitions among the state, counties, providers of mental health and alcohol and other drug abuse services, consumers of the services and their families and advocates for persons with mental illness and for alcoholic and drug dependent persons to develop, coordinate and provide a full range of resources to advance prevention; early intervention; treatment; recovery; safe and affordable housing; opportunities for education, employment and recreation; family and peer support; self–help; and the safety and well–being of communities.

(b) In cooperation with counties, providers of mental health and alcohol and other drug abuse services, consumers of the services, interested community members and advocates for persons with mental illness and for alcoholic and drug dependent persons, develop and implement a comprehensive strategy to reduce stigma of and discrimination against persons with mental illness, alcoholics and drug dependent persons.

(c) Develop and implement a comprehensive strategy to involve counties, providers of mental health and alcohol and other drug abuse services, consumers of the services and their families, interested community members and advocates for persons with mental illness and for alcoholic and drug dependent persons as equal participants in service system planning and delivery.

(d) Promote responsible stewardship of human and fiscal resources in the provision of mental health and alcohol and other drug abuse services.

(e) Develop and implement methods to identify and measure outcomes for consumers of mental health and alcohol and other drug abuse services.

(f) Promote access to appropriate mental health and alcohol and other drug abuse services regardless of a person's geographic location, age, degree of mental illness, alcoholism or drug dependency or availability of personal financial resources.

(g) Promote consumer decision making to enable persons with mental illness and alcohol or drug dependency to be more self–sufficient.

(h) Promote use by providers of mental health and alcohol and other drug abuse services of individualized service planning, under which the providers develop written individualized service plans that promote treatment and recovery, together with service consumers, families of service consumers who are children and advocates chosen by consumers.

(5) The department shall ensure that providers of mental health and alcohol and other drug abuse services who use individualized service plans, as specified in sub. (4) (h), do all of the following in using a plan:

(a) Establish meaningful and measurable goals for the consumer.

(b) Base the plan on a comprehensive assessment of the consumer's strengths, abilities, needs and preferences.

(c) Keep the plan current.

(d) Modify the plan as necessary.

History: 1975 c. 430; 1969 a. 336; 1995 a. 292; 1999 a. 9.

51.032 Denial and revocations of certification or approval based on tax delinquency. (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing any of the following:

(a) A certification issued under s. 51.038.

(b) A certification issued under s. 51.04.

(c) A certification issued under rules required under s. 51.42 (7) (b) 11.

(d) A certification issued under rules required under s. 51.421 (3) (a).

(e) An approval issued under s. 51.45 (S).

(1m) If an individual who applies for a certification or approval under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certification or approval, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A certification or approval issued in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(3) Except as provided in sub. (1m), the department shall deny an application for the issuance of a certification or approval specified in sub. (1) if the applicant does not provide the infomiation specified in sub. (1).

(4) The department shall deny an application for the issuance of a certification or approval specified in sub. (1) or shall revoke a certification or approval specified in sub. (1) if the department

of revenue certifies under s. 73.0301 that the applicant for or holder of a certification or approval is liable for delinquent taxes.

(5) An action taken under sub. (3) or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

History: 1997 8.237; 1999 a. 9.

51.038 Outpatient mental health clinic certification. Except as provided in s. 51.032, if a facility that provides mental health services on an outpatient basis holds current accreditation from the council on accreditation of services for families and children, the deparhnent may accept evidence of this accreditation as equivalent to the standards established by the department, for the purpose of certifying the facility for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f., a community aids funding recipient under s. 51.423 (2) or as mandated coverage under s. 632.89.

History: 1987 a. 27; 1997 a. 237.

51.04 Treatment facility certification. Except as provided in s. 51.032, any treatment facility may apply to the department for certification of the facility for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f. or to a community aids funding recipient under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The department shall annually charge a fee for each certification.

History: 1975 c. 223; Stats. 1975 s. 51.44; 1975 c. 430 s. 53m; Stats. 1975 s. 51.04; 1983 a. 27; 1985 a. 29, 176; 1995 a. 27; 1997 a. 237.

51.05 Mental health institutes. (1) DESIGNATION. The mental health institute located at Mendota is known as the "Mendota Mental Health Institute" and the mental health institute located at Winnebago is known as the "Winnebago Mental Health Institute". Goodland Hall West, a facility located at Mendota Mental Health Institute, is designated as the "Maximum Security Facility at Mendota Mental Health Institute". The department shall divide the state by counties into *2* districts, and may change the boundaries of these districts, arranging them with reference to the number of patients residing in them at a given time, the capacity of the institutes and the convenience of access to them.

(2) ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept for admission to a mental health institute any resident person, except in an cniergency, unless the county department under s. 51.42 in the county where the person has legal residency authorizes the care, as provided in s. 51.42 (3) (as). Patients who are committed to the department under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06, admitted by the department under s. 975.17, 1977 stats., or are transferred from a secured correctional facility, a secured child caring institution or a secured group home to a state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this section.

(3) ADMISSIONS AUTHORIZED BY DEPARTMENT. Any person who is without a county responsible for his or her care and any person entering this state through the compact established under s. 51.75 may be accepted by the department and temporarily admitted to an instihite. Such person shall be transferred to the county department under s. 51.42 for the community where the best interests of the person can best be served, as soon as practicable.

(3g) EXPENSE REDUCTION. The department shall annually reduce by $500,000 the amount by which accumulated expenses of providing care to patients of the mental health institutes exceed the accumulated revenues from providing that care. until the accumulated revenues of the mental health institutes are in balance with the accumulated expenses of the mental health institutes.

(3m) REVENUES AND EXPENDITURES; REPORTS. Notwithstanding s. 20.903 (1), the department shall implement a plan that is approved by the department of administration to assure that there are sufficient revenues, as projected by the department of health and family services, to cover anticipated expenditures under the appropriation under s. 20.435 (2) (gk) for the purpose of reimbursing the provision of care to patients of the Mendota Mental Health Institute or the Winnebago Mental Health Institute and to ensure that the department complies with sub. (3g). The department of health and family services shall make reports to the department of administration every 3 months, beginning on October 1, 1993, concerning the implementation of this plan. The department of health and family services shall make reports to the joint committee on finance by December 31 of each year that identify the change, during the preceding fiscal year, in the amount by which the accumulated expenses of providing care to patients of the mental health instihites exceed the accumulated revenues from providing that care; describe the actions taken by the department during the preceding fiscal year to reduce that amount; and describe the actions that the department is taking during the current year to reduce that amount.

(4) TRANSFERS AND DISCHARGES. The transfer or discharge of any person who is placed in a mental health institute shall be made subject to s. 51.35.

(5) SCHOOL ACTIVITIES. If an individual over the age of 2 and under the age of 22 and eligible for special education and related services under subch. V of ch. 115 is committed, admitted or transferred to or is a resident of the Mendota Mental Health Institute or Winnebago Mental Health Institute, the individual shall attend a school program operated by the applicable mental health institute or a school outside the applicable mental health institute which is approved by the department of public instruction. A school program operated by the Mendota Mental Health Institute or Winnebago Mental Health Institute shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency.

(6) HEARING–IMPAIRED INDIVIDUALS. The department shall provide mental health services appropriate for hearing–impaired individuals who are residents of or are committed, admitted or transferred to a mental health institute.

History: 1975 c. 430; 1977 c. 328; 1979 c. 117; 1983 a. 293; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 27; 1989 a. 31, 359; 1991 a. 315; 1993 a. 437 ss. 103 and 266; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 77, 164; 1999 a. 9.83.

51.06 Centers for the developmentally disabled. (1) PURPOSE. The purpose of the northern center for developmentally disabled, central center for developmentally disabled and southern center for developmentally disabled is to provide services needed by developmentally disabled citizens of this state that are otherwise unavailable to them, and to return those persons to the community when their needs can be met at the local level.

(1m) SERVICES. Services to be provided by the department at centers for the developmentally disabled shall include:

(a) Education within the requirements of sub. (2), training, habilitative and rehabilitative services to those persons placed in its custody.

(b) Development–evaluation services to citizens through county departments under ss. 51.42 and 51.437.

(c) Assistance to such community boards in meeting the needs of developmentally disabled citizens.

(d) Services for up to 50 individuals with developmental disability who are also diagnosed as mentally ill or who exhibit extremely aggressive and challenging behaviors.

(1r) ALTERNATIVE SERVICES. (a) In addition to services provided under sub. (1m), the department may, when the department determines that community services need to be supplemented, authorize a center for the developmentally disabled to offer short–term residential services, dental and mental health services, therapy services, psychiatric and psychological services, general medical services, pharmacy services, and orthotics.

(b) Services under this subsection may be provided only under contract between the department and a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a school district, or another public or private entity within the state to persons referred from those entities, at the discretion of the department. The

department shall charge the referring entity all costs associated with providing the services. Unless a referral is made, the department may not offer services under this subsection to the person who is to receive the services or to his or her family. The department may not impose a charge for services under this subsection upon the person receiving the services or upon his or her family. Any revenues received under this subsection shall be credited to the appropriation account under s. 20.435 (2) (g).

(c) 1. Services under this subsection are governed by subchapter XVI of ch. 48 and ss. 50.03, 50.032, 50.033, 50.034 (1) to (3), 50.035, 50.04, 50.09, 51.04, 51.42 (7) (b), and 51.61, for the application of which the services shall be considered to be provided by a private entity, by rules promulgated under those statutes, and by the terms of the contract between the department, except that, in the event of a conflict between the contractual terms and the statutes or rules, the services shall comply with the contractual, statutory, or rules provision that is most protective of the service recipient's health, safety, welfare, or rights.

2. Sections 46.03 (1S), 46.10, 51.15(2), 51.20 (13) (c) 1., and 51.42 (3) (as) and zoning or other ordinances or regulations of the county, city, town, or village in which the services are provided or the facility is located do not apply to the services under this subsection.

3. The department may not be required, by court order or otherwise, to offer services under this subsection.

(d) A residential facility operated by a center for the developmentally disabled that is authorized by the department under this subsection may not be considered to be a hospital, as defined in s. 50.33 (2), an inpatient facility, a state treatment facility, or a treatment facility.

(2) SCHOOL ACTIVITIES. If an individual over the age of 2 years and under the age of 22 years and eligible for special education and related services under subch. V of ch. 115 is admitted to, is placed in or is a resident of a center. the individual shall attend a school program operated by the center or a school outside the center which is approved by the department of public instruction. A school program operated by the center shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency.

(3) ADMISSION. Individuals under the age of 22 years shall be placed only at the central center for the developmentally disabled unless the department authorizes the placement of the individual at the northern or southern center for the developmentally disabled.

(4) TRANSFER OK DISCHARGE. The transfer or discharge of any person who is placed in a center for the developmentally disabled shall be made subject to s. 51.35.

History: 1975 c. 430: 1981 c. 20; 1985 a. 29 ss. 1061 to 1064,3200 (56): 1985 a. 176; 1991 a. 39; 1993 a. 16: 1995 a. 27 s. 9145 (1); 1997 a. 27,164; 1999 a. 9: 2001 a. 16.

51.07 Outpatient services. (1) The department may establish a system of outpatient clinic services in any institution operated by the department.

(2) It is the purpose of this section to:

(a) Provide outpatient diagnostic and treatment services for patients and their families.

(b) Offer precommitment and preadmission evaluations and studies.

(3) The department may provide outpatient services only to patients contracted for with county departments under ss. 51.42 and 51.437 in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state and persons receiving services under contracts under s. 46.043. The full and actual cost less applicable collections of services contracted for with county departments under s. 51.42 or 51.437 shall be charged to the respective county department under s. 51.42 or 51.437. The state shall provide the services required for patient care only if no outpatient services are funded by the department in the county or group of counties served by the respective county department under s. 51.42 or 51.437.

History: 1973 c. 90,333; 1975 c. 430 s. 19; 1985 a. 176; 1997 a. 27; 1999 a. 9.

51.08 Milwaukee County Mental Health Complex. Any county having a population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a county mental health complex. The county mental health complex shall be a hospital devoted to the detention and care of drug addicts, alcoholics, chronic patients and mentally ill persons whose mental illness is acute. Such hospital shall be governed pursuant to s. 46.21. Treatment of alcoholics at the county mental health complex is subject to approval by the department under s. 51.45 (8). The county mental health complex established pursuant to this section is subject to rules promulgated by the department concerning hospital standards.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 ss. 550 to 352, 523; 1971 c. 211; 1973 c. 90, 198; 1975 c. 41; 1975 c. 430 s. 15; Stats. 1975 s. 51.08; 1985 a. 332 s. 251 (l); 1987 a. 307.

51.09 County hospitals. Any county having a population of less than 500,000 may establish a hospital or facilities for the detention and care of mentally ill persons, alcoholics and drug addicts; and in connection therewith a hospital or facility for the care of cases afflicted with pulmonary tuberculosis. County hospitals established pursuant to this section are subject to rules promulgated by the department concerning hospital standards, including standards for alcoholic treatmcnt facilities under s. 51.45 (8).

History: 1971 c. 211; 1973 c. 198: 1975 c. 430 s. 16; Stats. 1975 s. 51.09; 1985 a. 332 s. 251 (l).

51.10 Voluntary admission of adults. (1) With the approval of the treatment director of the treatment facility or the director's designee, or in the case of a center for the developmentally disabled, the director of the center or the director's designee, and the approval of the director of the appropriate county department under s. 51.42 or 51.437, an adult desiring admission to an approved inpatient treatment facility may be admitted upon application. This subsection applies only to admissions made through a county department under s. 51.42 or 51.437 or through the department.

(2) With the approval of the director of the treatment facility or the director's designee and the director of the appropriate county department under s. 51.42 or 51.437, an adult may be voluntarily admitted to a state inpatient treatment facility.

(3) Voluntary admission of adult alcoholics shall be in accordance with s. 51.45 (10).

(4) The criteria for voluntary admission to an inpatient treatment facility shall be based on an evaluation that the applicant is mentally ill or developmentally disabled, or is an alcoholic or drug dependent and that the person has the potential to benefit from inpatient care, treatment or therapy. An applicant is not required to meet a standard of dangerousness undcr s. 51.20 (1) (a) 2. to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

(4m) (a) An adult who meets the criteria for voluntary admission under sub. (4) and whose admission is approved under sub. (1) or (2) may also be admitted to an inpatient treatment facility if:

1. A physician of the facility submits a signed request and certifies in writing, before not less than 2 witnesses, that the physician has advised the patient in the presence of the witnesses both orally and in writing of the person's rights under sub. (5) and of the benefits and risks of treatment, the patient's right to the least restrictive form of treatment appropriate to the patient's needs and the responsibility of the facility to provide the patient with this treatment; or

2. The person applies for admission in writing.

(b) Any person admitted under par. (a) 1. who fails to indicate a desire to leave the facility but who refuses or is unable to sign

an application for admission is presumed to consent to admission and may be held for up to 7 days as a voluntary patient.

(c) On the first court day following admission under par. (a) 1., the facility shall notify the court assigned to exercise probate jurisdiction for the county in which the facility is located of the admission. Within 24 hours after receiving this notice, excluding Saturdays, Sundays and holidays, the court shall appoint a guardian ad litem to visit the facility and to determine if there has been compliance with this subsection. The guardian ad litem shall visit the patient within 48 hours, excluding Saturdays, Sundays and holidays, to ascertain whether the patient wishes a less restrictive form of treatment and, if so, shall assist the patient in obtaining the proper assistance from the facility. The guardian ad litem shall inform the patient of all rights to which the patient is entitled under this chapter.

(d) If a patient admitted under par. (a) 1. has not signed a voluntary admission application within 7 days after admission, the patient, the guardian ad litem and the physician who signed the admission request shall appear before the judge or a circuit court commissioner assigned to exercise probate jurisdiction for the county in which the facility is located to determine whether the patient shall remain in the facility as a voluntary patient. If the judge or circuit court commissioner determines that the patient desires to leave the facility, the facility shall discharge the patient. If the facility has reason to believe the patient **is** eligible for commitment under s. 51.20, the facility may initiate procedures for involuntary commitment.

(5) (a) At the time of admission to an inpatient facility the individual being admitted shall be informed orally and in writing of his or her right to leave upon submission of a written request to the staff of the facility except when the director or such person's designee files a statement of emergency detention under **s.** 51.15 with the court by the end of the next day in which the court transacts business.

(b) Writing materials for use in requesting discharge shall be available at all times to any voluntarily admitted individual, and shall bc given to the individual upon request. **A** copy of the patient's and resident's rights shall be given to the individual at the time of admission.

(c) Any patient or resident voluntarily admitted to an inpatient treatment facility shall be discharged on request, unless the treatment director or the treatment director's designee has reason to believe that the patient or resident is dangerous in accordance with a standard under s. 51.20 (1) (a) 2. or (am) and files a statement of emergency detention under **s.** 51.15 with the court by the end of the next day in which the court transacts business. The patient or resident shall be notified immediately when such a statement is to be filed. Prior to the filing of a statement, the patient or resident may be detained only long enough for the staff of the facility to evaluate the individual's condition and to file the statement of emergency detention. This time period may not exceed the end of the next day in which the court transacts business. Once a statement is filed, a patient or resident may be detained as provided in **s.** 51.15 (I). The probable cause hearing required under **s.** 51.20 (7) shall be held within 72 hours after the request for discharge, excluding Saturdays, Sundays and legal holidays.

(6) A person against whom a petition for involuntary commitment has been filed under **s.** 51.15 or 51.20 may agree to be admitted to an inpatient treatment facility under this section. The court may permit the person to become a voluntary patient or resident pursuant to this section upon signing an application for voluntary admission, if the director of the appropriate county department under **s.** 51.42 or 51.437 and the director of the facility to which the person will be admitted approve of the voluntary admission within 30 days of the admission. Except as provided in s. 51.20 (8) (bg) or (bm), the court shall dismiss the proceedings under s. 51.20 30 days after the person's admission if the person is still a voluntary patient or resident or upon the discharge of the person by the treatment director of the facility or his or her designee, if that occurs first. For any person who is a voluntary patient or resident under this subsection, actions required under **s.** 51.35 (5) shall be initiated within 14 days of admission.

(7) The treatment director of a facility may temporarily admit an individual to an inpatient facility when there is reason to question the competency of such individual. The treatment director shall then apply to the court for appointment of a guardian within 48 hours of the time of admission, exclusive of Saturdays, Sundays and legal holidays. The individual may remain at the facility pending appointment of a guardian.

(8) An adult for whom a guardian of the person has been appointed under ch. 880 because of the subject's incompetency may be voluntarily admitted to an inpatient treatment facility under this section only if the guardian and the ward consent to such admission.

(9) Upon admission to an inpatient facility, the facility shall offer the patient orally and in writing the opportunity to execute an informed consent form under **s.** 51.30(2), requiring the facility to notify the patient's parent, child or spouse or any other adult of the patient's release. If the patient signs the consent form, the facility shall notify the person specified in the form as soon as possible after the oatient reauests release.

History: 1975 c 430,1977 c 354, 428, 447; 1979c 336: 1985 a. 29 s. 3200 (56); 1985 a 139,176.332, 1987 a 366,1995 a 292.2001 a. 61.

51.13 Admission of minors. (1) ADMISSION THROUGH BOARD OR DEPARTMENT. (a) Except as provided in par. (c) and s. 51.45 (2m), the application for voluntary admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for alcoholism or drug abuse and the application for voluntary admission of a minor who is under 14 years of age to an approved inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse shall be executed by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject of an application for voluntary admission under this paragraph indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

(b) The application for voluntary admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c) 1.

(c) 1. If a minor 14 years of age or older wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian refuses to execute the application for admission or cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last-known address. If, after a hearing, the court determines that the consent of the parent or guardian is being unreasonably withheld, that the parent or guardian cannot be Found, or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian.

2. If a minor under 14 years of age wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last-know address. If, after a hearing, the court deter-

mines that the parent or guardian cannot be found or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian.

3. The court may, at the minor's request, temporarily approve the admission pending hearing on the petition. If a hearing is held under subd. 1. or 2., no review or hearing under sub. (4) is required.

(d) A minor against whom a petition or statement has been filed under s. 51.15, 51.20, or 51.45 (12) or (13) may be admitted under this section. The court may permit the minor to become a voluntary patient under this section upon approval by the court of an application executed under par. (a), (b), or (c). The court shall then dismiss the proceedings under s. 51.15, 51.20, or 51.45 (12) or (13). If a hearing is held under this subsection, no hearing under sub. (4) is required.

(e) A minor may be admitted immediately upon the approval of the application executed under par. (a) or (b) by the treatment director of the facility or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, and the director of the appropriate county department under s. 51.42 or 51.437 if the county department is to be responsible for the cost of the minor's therapy and treatment. Approval shall be based upon an informed professional opinion that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse, that the treatment facility offers inpatient therapy or treatment that is appropriate for the minor's needs, and that inpatient care in the facility is the least restrictive therapy or treatment consistent with the minor's needs. In the case of a minor who is being admitted for the primary purpose of treatment for alcoholism or drug abuse, approval shall also be based on the results of an alcohol or other drug abuse assessment that conforms to the criteria specified in s. 938.547 (4).

(f) Admission under par. (c) or (d) shall also be approved by the treatment director of the facility or his or her designee, or in the case of a center for the developmentally disabled, the director of the center or his or her designee, and the director of the appropriate county department under s. 51.42 or 51.437 if the county department is to be responsible for the cost of the minor's therapy and treatment, within 14 days of the minor's admission.

(2) OTHER ADMISSIONS. (a) A minor may be admitted to an inpatient treatment facility without complying with the requirements of this section if the admission does not involve the department or a county department under s. 51.42 or 51.437, or a contract between a treatment facility and the department or a county department. The application for voluntary admission of a minor who is 14 years of age or older to an inpatient treatment facility for the primary purpose of treatment for alcoholism or drug abuse and the application for voluntary admission of a minor who is under 14 years of age to an inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability. alcoholism, or drug abuse shall be executed by a parent who has legal custody of the minor or by the minor's guardian. The application for voluntary admission of a minor who is 14 years of age or older to an inpaticnt treatment facility for the primary purpose of treatment for mental illness or developmental disability shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian.

(b) Notwithstanding par. (a), any minor who is 14 years of age or older and who is admitted to an inpatient treatment facility for the primary purpose of trcatment of mental illness or developmental disability has the right to be discharged within 48 hours after his or her request, as provided in sub. (7) (b). At the time of admission, any minor who is 14 years of age or older and who is admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability, and the minor's parent or guardian, shall be informed of this right orally and in writing by the director of the hospital or such person's designee. This paragraph does not apply to individuals who receive services in hospital emergency rooms.

(c) A copy of the patient's rights established under s. 51.61 shall be given and explained to the minor and the minor's parent or guardian at the time of admission by the director of the facility or such person's designee.

(d) Writing materials for use in requesting a discharge shall be made available at all times to all minors who are 14 years of age or older and who are admitted under this subsection for the primary purpose of treatment for mental illness or developmental disability. The staff of the facility shall assist such minors in preparing or submitting requests for discharge.

(3) NOTICE OF RIGHTS. (a) Prior to admission if possible, or as soon thereafter as possible, the minor and the parent or guardian shall be informed by the director of the facility or his or her designee, both orally and in writing, in easily understandable language, of the review procedure in sub. (4), including the standards to be applied by the court and the possible dispositions, the right to a hearing upon request under sub. (4), and the minor's right to appointed counsel as provided in sub. (4) (d) if a hearing is held.

(b) A minor 14 years of age or older who has been admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability, a minor who is voluntarily admitted under sub. (1) (c) 1. or 2., and the minor's parent or guardian shall also be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the minor's right to request discharge and to be discharged within 48 hours of the request if no petition or statement is filed for emergency detention, emergency commitment. involuntary commitment, or protective placement, and the minor's right to consent to or refuse treatment as provided in s. 51.61 (6).

(c) A minor 14 years of age or older who has been admitted to an inpatient facility for the primary purpose of treatment for alcoholism or drug abuse, a minor under 14 years of age who has been admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse, and the minor's parent or guardian shall also be informed by the director or his or her designee. both orally and in writing, in easily understandable language, of the right of the parent or guardian to request the minor's discharge as provided in sub. (7) (b) and of the minor's right to a hearing to determine continued appropriateness of the admission as provided in sub. (7) (c).

(d) A copy of the patient's rights established in s. 51.61 shall be given and explained to the minor and the minor's parent or guardian at the time of admission by the director of the facility or such person's designee.

(e) Writing materials for use in requesting a hearing or discharge under this section shall be made available to minors at all times by every inpatient treatment facility. The staff of each such facility shall assist minors in preparing and submitting requests for discharge or hearing.

(4) REVIEW PROCEDURE. (a) Within 3 days after the admission of a minor under sub. (1), or within 3 days after application for admission of the minor, whichever occurs first, the treatment director of the facility to which the minor is admitted or, in the case of a center for the developmentally disabled, the director of the center, shall file a verified petition for review of the admission in the court assigned to exercise jurisdiction under chs. 48 and 938 in the county in which the facility is located. A copy of the application for admission and of any relevant professional evaluations shall be attached to the petition. The petition shall contain all of the following:

1. The name, address and date of birth of the minor.

2. The names and addresses of the minor's parents or guardian.

3. The facts substantiating the petitioner's belief in the minor's need for psychiatric services, or services for developmental disability, alcoholism or drug abuse.

4. The facts substantiating the appropriateness of inpatient treatment in the inpatient treatment facility.

5. The basis for the petitioner's opinion that inpatient care in the facility is the least restrictive treatment consistent with the needs of the minor.

6. Notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the wishes of the minor.

(b) If hardship would otherwise occur and if the best interests of the minor would be served thereby, the court may, on its own motion or on the motion of any interested party, remove the petition to the court assigned to exercise jurisdiction under chs. 48 and 938 of the county of residence of the parent or guardian.

(e) **A** copy of the petition shall be provided by the petitioner to the minor and his or her parents or guardian within 5 days after admission.

(d) Within 5 days after the filing of the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether there is a prima facie showing that the minor is in need of psychiatric services, or services for developmental disability, alcoholism, or drug abuse, that the treatment facility offers inpatient therapy or treatment that is appropriate to the minor's needs and that inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor, and, if the minor is 14 years of age or older and has been admitted to the treatment facility for the primary purpose of treatment for mental illness or developmental disability, whether the admission is voluntary on the part of the minor. If such a showing is made, the court shall permit voluntary admission. If the court is unable to make those determinations based on the petition and accompanying documents, the court may dismiss the petition as provided in par. (h); order additional information to be produced as necessary for the court to make those determinations within 14 days after admission or application for admission. whichever is sooner; or hold a hearing within 14 days after admission or application for admission, whichever is sooner. If a notation of the minor's unwillingness appears on the face of the petition, or if a hearing has been requested by the minor or by the minor's counsel, parent, or guardian, the court shall hold a hearing to review the admission within 14 days after admission or application for admission, whichever is sooner, and shall appoint counsel to represent the minor if the minor is unrepresented. If the court considers it necessary, the court shall also appoint a guardian ad litem to represent the minor.

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail to the minor, the minor's parents or guardian, the minor's counsel and guardian ad litem if any, the petitioner and any other interested party at least 96 hours prior to the time of hearing.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. **A** record shall be maintained of the entire proceedings. The record shall include findings of fact and conclusions of law. Findings shall be based on a clear and convincing standard of proof.

(g) If the court finds that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse in an inpatient facility, that the inpatient facility to which the minor is admitted offers therapy or treatment that is appropriate for the minor's needs and that is the least restrictive therapy or treatment consistent with the minor's needs, and, in the case of a minor 14 years of age or older who is being admitted for the primary purpose of treatment for mental illness or developmental disability, that the application is voluntary on the part of the minor, the court shall permit voluntary admission. If the court finds that the therapy or treatment in the inpatient facility to which the minor is admitted is not appropriate or is not the least restrictive therapy or treatment consistent with the minor's needs, the court may order placement in or transfer to another more appropriate or less restrictive inpatient facility, except that the court may not permit or order placement in or transfer to the northern or southern centers for the developmentally disabled of a minor unless the department gives approval for the placement or transfer, and if the order of the court is approved by all of the following if applicable:

1. The minor if he or she is 14 years of age or older and is being admitted for the primary purpose of treatment for mental illness or developmental disability.

2. The treatment director of the facility or his or her designee.

3. The director of the appropriate county department under s. 51.42 or 51.437 if the county department is to be responsible for the cost of the minor's therapy or treatment.

(h) If the court does not permit voluntary admission under par. (g), it shall do one of the following:

1. Dismiss the petition and order the application for admission denied and the minor released.

2. Order the petition to be treated as a petition for involuntary commitment and refer it to the court where the review under this section was held, or if it was not held in the county of legal residence of the subject individual's parent or guardian and hardship would otherwise occur and if the best interests of the subject individual would be served thereby, to the court assigned to exercise jurisdiction under chs. 48 and 938 in such county for a hearing under s. 51.20 or 51.45 (13).

3. If the minor is 14 years of age or older and appears to be developmentally disabled, proceed in the manner provided in s. 51.67 to determine whether the minor should receive protective placement or protective services. except that a minor shall not have a temporary guardian appointed if he or she has a parent or guardian.

4. If there is a reason to believe the minor is in need of protection or services under s. 48.13 or 938.13 or the minor is an expectant mother of an unborn child in need of protection or services under s. 48.133, dismiss the petition and authorize the filing of a petition under s. 48.25 (3) or 938.25 (3). The court may release the minor or may order that the minor be taken and held in custody under s. 48.19 (1) (c) or (cm) or938.19 (1) (c).

(i) Approval of an adniission under this subsection does not constitute a finding of mental illness, developmental disability, alcoholism or drug dependency.

(5) **APPEAL.** Any person who is aggrieved by a determination or order under this section and who is directly affected thereby may appeal to the court of appeals under s. 809.40.

(6) SHORT-TERM ADMISSIONS. (a) **A** minor may be admitted to an inpatient treatment facility without review of the application under sub. (4) for diagnosis and evaluation or for dental, medical, or psychiatric services for a period not to exceed 12 days. The application for short-term admission of a minor shall be executed by the minor's parent or guardian, and, if the minor is 14 years of age or older and is being admitted for the primary purpose of diagnosis, evaluation, or services for mental illness or developmental disability. by the minor. **A** minor may not be readmitted *to* an inpatient treatment facility for psychiatric services under this paragraph within 120 days of a previous admission under this paragraph.

(b) The application shall be reviewed by the treatment director of the facility or, in the case of a center for the developmentally disabled, by the director, and shall be accepted only if the director determines that the admission constitutes the least restrictive means of obtaining adequate diagnosis and evaluation of the minor or adequate provision of medical, dental or psychiatric services.

(c) At the end of the 12-day period, the minor shall be released unless an application has been filed for voluntary admission under sub. (1) or a petition or statement has been filed for emergency

detention, emergency commitment, involuntary commitment or protective placement.

(7) DISCHARGE. (a) If a minor **is** admitted to an inpatient treatment facility while under 14 years of age, and if upon reaching age 14 is in need of further inpatient care and treatment primarily for mental illness or developmental disability, the director of the facility shall request the minor and the minor's parent or guardian to execute an application for voluntary admission. Such an application may be executed within 30 days prior to a minor's 14th birthday. If the application is executed, a petition for review shall be filed in the manner prescribed in sub. (4), unless such a review has been held within the last 120 days. If the application is not **executed** by the time of the minor's 14th birthday, the minor shall be discharged unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement by the end of the next day in which the court transacts business.

(b) Any minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for mental illness or developmental disability, and any minor who is voluntarily admitted under sub. (1) (c) 1. or 2., may request discharge in writing. In the ease of a minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for alcoholism or drug abuse or a minor under 14 years of age who is voluntarily admitted under this section for the primary purpose of treatment for mental illness. developmental disability, alcoholism, or drug abuse, the parent or guardian of the minor may make the request. Upon receipt of any form of written request for discharge from a minor, the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian. The minor shall be discharged within 48 hours after submission of the request, exclusive of Saturdays, Sundays, and legal holidays, unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement.

(c) Any minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for alcoholism or drug abuse, and who is not discharged under par. (b), and any minor under 14 years of age who is voluntarily admitted under this section for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse, and who is not discharged under par. (b), may submit a written request to the court for a hearing to determine the continued appropriateness of the admission. If the director or staff of the inpatient treatment facility to which a minor described in this paragraph is admitted observes conduct by the minor that demonstrates an unwillingness to remain at the facility, including but not limited to a written expression of opinion or unauthorized absence, the director shall file a written request with the court to determine the continued appropriateness of the admission. A request that is made personally by a minor under this paragraph shall be signed by the minor but need not be written or composed by the minor. **A** request for a hearing under this paragraph that is received by staff or the director of the facility in which the child is admitted shall be filed with the court by the director. The court shall order a hearing upon request if no hearing concerning the minor's admission has been held within 120 days after receipt of the request. The court shall appoint counsel and, if the court considers it necessary, a guardian ad litem to represent the minor and if a hearing is held shall hold the hearing within 14 days after the request, unless the parties agree to a longer period. After the hearing, the court shall make disposition of the matter in the manner provided in sub. (4).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300,331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366: 1995 a. 77,225; 1997 a. 27, 35, 292; 2001 a. 16, 104.

Due process rights of a minor child whose parents or guardians seek admission **of** the child are discussed. Parham v. J. R.. 442 U.S. 584 (1979). See also Secretary of' Public Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979).

51.14 Outpatient treatment of minors. (1) DEFINITIONS. In this section, "outpaticnt mental health treatment" means treatment and social services for mental illness, except psychotropic medications and 24-hour care and custody, provided by a treatment facility.

(2) MENTAL HEALTH REVIEW OFFICER. Each court assigned to exercise jurisdiction under chs. 48 and 938 shall designate a mental health review officer to review petitions filed under sub. (3).

(3) REVIEW BY MENTAL HEALTH REVIEW OFFICER. (a) Either a minor 14 years of age or older or his or her parent or guardian may petition the mental health review officer in the county in which the parent or guardian has residence for a review of a refusal of either the minor or his or her parent or guardian to provide the informed consent for outpatient mental health treatment required under **s.** 51.61 (6).

(b) **A** petition filed under this subsection shall contain all of the following:

1. The name, address and birth date of the minor.

2. The name and address of the parent or guardian of the minor.

3. The facts substantiating the petitioner's belief that the minor needs outpatient mental health treatment.

4. Any available information which substantiates the appropriateness of the particular treatment sought for the minor and that the particular treahnent sought is the least restrictive treatment consistent with the needs of the minor.

(c) Any professional evaluations relevant under par. (b) 3. or 4. shall be attached to the petition filed under this subsection.

(d) The court which appointed the mental health review officer shall ensure that necessary assistance is provided to the petitioner in the preparation of the petition under this subsection.

(c) The mental health rcview officer shall notify the county department under s. 51.42 or 51.437 of the contents of any petition rcccivcd by the mental health review officer under this subsection. The county department under **s.** 51.42 or 51.437 may, following rcview of the petition contents, make recommendations to the mental health review officer as to the need for and appropriateness and availability of treatment.

(f) If prior to a hearing under par. (g) either the minor or his or her parent or guardian requests and the mental health rcvicw officer determines that the best interests of the minor would be served, a pctition may be filed for court review under sub. (4) without further review under this subsection.

(g) Within 21 days after the filing of a petition under this subsection, the mental health review officer shall hold a hearing on the refusal of the minor or the minor's parent or guardian to provide informed consent for outpatient treatment. The mental health review officer shall provide notice of the date, time and place of the hearing to the minor and the minor's parent or guardian at least 96 hours prior to the hearing.

(h) If following the hearing under par. (g) and after taking into consideration the recommendations, if any, of the county department under s. 51.42 or 51.437 made under par. (e), the mental hcalth review officer finds all of the following, he or she shall issue a written order that, notwithstanding the written, informed consent requirement of **s.** 51.61 (6), the written, informed consent of the minor, if the minor is refusing to provide consent, or the written, informed consent of the minor's parent or guardian, if the parent or guardian is refusing to provide consent, is not required for outpaticnt mental health treatment for the minor:

1. The informed consent is unreasonably withheld.

2. The minor is in need of treatment.

3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.

4. The proposed treatment is in the best interests of the minor.

(i) The findings under par. (h) and the reasons supporting each finding shall be in writing.

(j) The mental health review officer shall notify the minor and the minor's parent or guardian of the right to judicial review under sub. (4).

(k) No person may be a mental health review officer in a proceeding under this section if he or she has provided treatment or services to the minor who is the subject of the proceeding.

(4) JUDICIAL REVIEW. (a) Within 21 days after the issuance of the order by the mental health review officer under sub. *(3)* or if the requirements of sub. (3) (f) are satisfied, the minor or his or her parent or guardian may petition a court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the minor's parent or guardian for a review of the refusal of either the minor or his or her parent or guardian to provide the informed consent for outpatient mental health treatment required under **s.** 51.61 (6).

(b) The petition in par. (a) shall conform to the requirements set forth in sub. (3) (b). If the minor has refused to provide informed consent, a notation of this fact shall be made on the face of the petition.

(c) If a notation of a minor's refusal to provide informed consent to outpatient mental health treatment appears on the petition, the court shall, at least 7 days prior to the time scheduled for the hearing, appoint counsel to represent the minor if the minor is unrepresented. If the minor's parent or guardian has refused to provide informed consent and the minor **is** unrepresented, the court shall appoint counsel to represent the minor, if requested by the minor or determined by the court to be in the best interests of the minor.

(d) The court shall hold a hearing on the petition within 21 days after filing of the petition.

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail, at least 96 hours prior to the hearing, to the minor, the minor's parent or guardian, the minor's counsel and guardian ad litem, if any, and any other interested party known to the court.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record, including written findings of fact and conclusions of law, shall be maintained of the entire proceedings. Findings shall be based on evidence that is clear, satisfactory and convincing.

(g) After the hearing under this subsection, the court shall issue a written order stating that, notwithstanding the written, informed consent requirement of **s.** 51.61 (6), the written, informed consent of the minor, if the minor refuses to provide consent, or the written, informed consent of the parent or guardian, if the parent or guardian refuses to provide consent, is not required for outpatient mental health treatment for the minor if the court finds all of the following:

1. The informed consent is unreasonably withheld.

2. The minor is in need of treatment.

3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.

4. The treatment is in the best interests of the minor.

(5) APPEAL. Any person who is aggrieved by a determination or order under sub. (4) and who is directly affected by the determination or order may appeal to the court of appeals under **s.** 809.40.

(6) FINDING OR ORDER NOT A FINDING OF MENTAL ILLNESS. A finding or order under this section does not constitute a finding of mental illness.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27.

NOTE: 1987 Wis. Act 367, that created this section. contains a prefatory note and an explanatory note following the section.

51.15 Emergency detention. (1) BASIS FOR DETENTION. (a) A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, and that the individual evidences any of the following:

1. **A** substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm on his or her part.

3. A substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treahnent facility, does not constitute reasonable provision for the individual's protection available in the community under this subdivision.

4. Behavior manifested by a recent act or omission that, due to mental illness or drug dependency, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness or drug dependency. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual can receive protective placement under **s.** 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision. Food, shelter or other care provided to an individual who is substantially incapable of providing the care for himself or herself, by any person other than a treatment facility. does not constitute reasonable provision for the individual's treatment or protection available in the community under this subdivision.

(b) The officer's or other person's belief shall be based on any of the following:

1. **A** specific recent overt act or attempt or threat to act or omission by the individual which is observed by the officer or person.

2. **A** specific recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person, including any probation, extended supervision and parole agent authorized by the department of corrections to exercise control and supervision over a probationer, parolee or person on extended supervision.

(2) FACILITIES FOR DETENTION. The law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall transport the individual, or cause him or her to be transported, for detention and for evaluation, diagnosis and treatment if permitted under sub. (8) to any of the following facilities:

(a) **A** hospital which is approved by the department as a detention facility or under contract with a county department under **s.** 51.42 or 51.437, or an approved public treatment facility;

(b) **A** center for the developmentally disabled;

(c) A state treatment facility; or

(d) An approved private treatment facility, if the facility agrees to detain the individual.

(3) CUSTODY. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

(4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and trcatnient are permitted under sub. (S), and shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a): the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

(5) DETENTION PROCEDURE: OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention that shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the beliefunder sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20**(7)** or 55.06(11)(b), the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and legal holidays.

(6) RELEASE. If the individual is released, the treatment director or his or her designee, upon the individual's request, shall arrange for the individual's transportation to the locality where he or she was taken into custody.

(7) INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and **s.** 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified in subs. (4) and (5) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

(8) EVALUATION. DIAGNOSIS AND TREATMENT. When an individual is detained under this section, the director and staff of the treatment facility may evaluate, diagnose and treat the individual during detention, if the individual consents. The individual has a right to refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided shall be filed by that person with the court.

(9) NOTICE OF RIGHTS. At the time of detcntion the individual shall bc informed by the director of the facility or such person's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 967.06 and ch. 977, if the individual is a child or is indigent, the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention.

(10) VOLUNTARY PATIENTS. If an individual has been admitted to an approved treatment facility under s. 51.10 or 51.13, or has been otherwise admitted to such facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under sub. (1), may sign a statement of emergency detention and may detain, or detain, evaluate, diagnose and treat the individual as provided in this section. In such case, the treatment director shall undertake all responsibilities that are required of a law enforcement officer under this section. The treatment director shall promptly file the statement with the court having probate jurisdiction in the county of detention as provided in this section.

(11) LIABILITY. Any individual who acts in accordance with this section, including making a determination that an individual has or does not have mental illness or cvidenccs or docs not evidence a substantial probability of harm under sub. (1) (a) 1., 2., 3. or 4., is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that the individual who acts in accordance with this section has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory and convincing.

(11g) OTHER LIABILITY. Subsection (11) applies to a director of a facility, as specified in sub. (2), or his or her designee, who under a court order evaluates, diagnoses or treats an individual

who is confined in a jail, if the individual consents to the evaluation, diagnosis or treatment.

(11m) TRAINING. Law enforcement agencies shall designate at least one officer authorized to take an individual into custody under this section who shall attend the in–service training on emergency detention and emergency protective placement procedures offered by a county department of community programs under s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the law enforcement agency's jurisdiction offers an in–service training program.

(12) PENALTY. Whoever signs a statement under sub. (4), *(5)* or (10) knowing the information contained therein to be false is guilty of a Class H felony.

NOTE: Sub. (12) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(12) PENALTY. Whoever signs a statement under sub. (4), (5) or (10) knowing the information contained therein to be false may be fined not more than $5,000 or imprisoned for not more than 7 years and 6 months or both.

History: 1975 c. 430; 1977 c. 29,428; 1979 c. 175,300,336,355; 1985 a. 176; 1987 a. 366,394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77. 175,292; 1997 a. 35, 283; 2001 a. 16 **ss.** 1966d to 1966h, 4034zb to 4034zd, 4041d to 4041g; 2001 a 109.

A mental health worker did not have immunity under sub. (11) for actions regarding a person already in custody and not taken into custody under an emergency detention. Kell v. Raemisch, 190 Wis. 2d 754, 528 N.W.2d 13 (Ct. App. 1994).

The time limits established by this section are triggered when a person taken into custody under this section is transported to any of the facilities designated by **sub,** (2). irrespective of whether the facility is one specifically chosen by the county for the receipt of persons taken into custody under this section, Milwaukee County v. Delores M. 217 Wis. 2d 69, 577 N.W.2d 371 (Ct. App. 1998).

The community caretaker exception that allows police officers to make a warrantless entry into a home when engaging in an activity that is unrelated to criminal activity and is for the public good applies to police activity undertaken pursuant to this section. State v. Horngren, 2000 WI **App** 177, 238 Wis. 2d 347. 617 N.W.2d 508.

It is inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to this section. 78 Atty. Gen. 59.

While **sub.** (7) does not authorize contractual agreements with counties outside of Wisconsin, **ss.** 51.75 (11), 51.87 (3). and 66.30 *(5)* [now 66.0303] each contain legal mechanisms through which financial or other responsibility for care and treatment of individuals from such counties may be shared under certain specified circumstances. 78 Atty. Gen. 59.

A law enforcement officer who places an individual under emergency detention is obligated to transport the individual to one of the four categories of facilities listed under sub. (2) until custody **of** the individual is transferred ***to*** the facility. 81 Atty. Gen. 110.

51.20 Involuntary commitment for treatment. (1) PETITION FOR EXAMINATION. (a) Except as provided in pars. (ab), (am), (ar) and (av), every written petition for examination shall allege that all of the following apply to the subject individual to be examined:

1. The individual is mentally ill or, except as provided under subd. 2. e., drug dependent or developmentally disabled and is a proper subject for treatment.

2. The individual is dangerous because he or she does any of the following:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this subd. 2. b., if the petition is filed under a court order under s. 938.30 *(5)* (c) 1. or (d) 1., a finding by the court cxcrcising jurisdiction under chs. 48 and 938 that the juvenile committed the act or acts alleged in the petition under s. 938.12 or 938.13 (12) may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subd. 2. c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual is appropriate for protective placement under s. *55.06* or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938. 13 (4). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subd. 2. c. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2. c.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subd. 2. d. exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual is appropriate for protective placement under s. *55.06* or, in the case of a minor: if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 **(4).** The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subd. 2. d. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subd. 2. d.

e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or trcatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional, or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. *55.06.* Food, shelter, or other care that is provided to an individual who is substantially incapable of obtaining food, shelter, or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's carc or trcatmcnt in the community under this subd. 2. e. The individual's status as a minor docs not automatically establish a substantial probability of suffering severe mental, emotional, or physical harm under this subd. 2. e.

(ab) If the individual is an inmate of a prison, jail or other criminal detention facility, the fact that the individual receives food, shelter and other care in that facility may not limit the applicability

of par. (a) to the individual. The food, shelter and other care does not constitute reasonable provision for the individual's protection available in the community.

(ad) 1. If a petition under par. (a) is based on par. (a) 2. e., the petition shall be reviewed and approved by the attorney general or by his or her designee prior to the time that it is filed. If the attorney general or his or her designee disapproves or fails to act with respect to the petition, the petition may not be filed.

2. Subdivision 1. does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 2. e.

(am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section or s. 971.17 or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions under par. (a) 2. c. or e. or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or apattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14(2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

(ar) If the individual is an inmate of a state prison, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and it shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 302.11 or 302.113, whichever is applicable. The petition shall have attached to it a signed statement by a licensed physician or a licensed psychologist of a state prison and a signed statement by a licensed physician or a licensed psychologist of a state treatment facility attesting either of the following:

1. That the inmate needs inpatient treatment at a state treatment facility because appropriate treatment is not available in the prison.

2. That the inmate's treatment needs can be met on an outpatient basis in the prison.

(av) 1. If the individual is an inmate who has been sentenced to imprisonment in a county jail or house of correction, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 302.43 or 303.19 (3). The petition shall have attached to it a signed statement by a licensed physician, licensed psychologist or other mental health professional attesting either of the following:

a. That the inmate needs inpatient treatment at a state or county treatment facility because appropriate treatment is not available in the jail or house of correction.

b. That the inmate's treatment needs can be met on an outpatient basis in the jail or house of correction.

2. This paragraph does not apply to petitions filed under this section on or after July 1, 1990.

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual, except that this requirement does not apply if the petition is filed pursuant to a court order under s. 938.30 (5)(c) 1. or (d) 1.

(c) The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in the place of a parent and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state. The petition may be filed in the court assigned to exercise probate jurisdiction for the county where the subject individual is present or the county of the individual's legal residence. If the judge of the court or a circuit court commissioner who handles probate matters is not available, the petition may be filed and the hearing under sub. (7) may be held before a judge or circuit court commissioner of any circuit court for the county. For the purposes of this chapter, duties to be performed by a court shall be carried out by the judge of the court or a circuit court commissioner of the court who is designated by the chief judge to so act, in all matters prior to a final hearing under this section. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

(1m) ALTERNATE GROUNDS FOR COMMITMENT. For purposes of subs. (2) to (9), the requirement of finding probable cause to believe the allegations in sub. (1) (a) or (am) may be satisfied by finding probable cause to believe that the individual satisfies sub. (1) (a) 1. and evidences such impaired judgment, manifested by evidence of a recent act or omission, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury may not be deemed substantial under this subsection if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of the services or if the individual is appropriate for protective placement under s. 55.06. The individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subsection. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subsection.

(2) NOTICE OF HEARING AND DETENTION. (a) Upon the filing of a petition for examination, the court shall review the petition to

determine whether an order of detention should be issued. The subject individual shall be detained only if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and the individual is eligible for commitment under sub. (1) (a) or (am) based upon specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual.

(b) If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. 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. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

(c) If the law enforcement officer has a detention order issued by a court, or if the law enforcement officer has cause to believe that the subject individual is mentally ill, drug dependent or developmentally disabled and is eligible for commitment under sub. (1) (a) or (am), based upon specific recent overt acts, attempts or threats to act or on a pattern of omissions made by the individual, the law enforcement officcr shall take the subject individual into custody. If the individual is detained by a law enforcement officer, the individual shall be orally informed of his or her rights under this section on amval at the detention facility by the facility staff, who shall also serve all documents requircd by this section on the individual.

(d) Placement shall be made in a hospital that is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual. Upon arrival at the facility, the individual is considered to be in the custody of the facility.

(3) LEGAL COUNSEL. At the time of the filing of the petition the court shall assure that the subject individual is represented by adversary counsel. If the individual claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations specified under s. 977.07 (1). If the individual is a child, the court shall refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

(4) PUBLIC REPRESENTATION. Except as provided in ss. 51.42 (3) (ar) 1. and 51.437 (4m) (f), the corporation counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

(5) HEARING REQUIREMENTS. The hearings which are requircd to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing. the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (11). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and *to* be represented by counsel. **All** proceedings under this chapter shall be reported as provided in SCR 71.01. The court may determine to hold a hearing under this section at the institution at which the individual is detained, whether or not located in the same county as the court with which the petition was filed, unless the individual or his or her attorney objects.

(6) JUVENILES. For minors, the hearings held under this section shall be before the court assigned to exercise jurisdiction under chs. 48 and 938.

(7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

(am) **A** subject individual may not be examined, evaluated or treated for a nervous or mental disorder pursuant to a court order under this subsection unless the court first attempts to determine whether the person is an enrollee of a health maintenance organization, limited service health organization or preferred provider plan, as defined in s. 609.01, and, if so, notifies the organization or plan that the subject individual is in need of examination, evaluation or treatment for a nervous or mental disorder.

(b) If the subject individual is not detained or is an inmate of a state prison, county jail or house of correction, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1).

(c) If the court determines that there is probable cause to believe the allegations made under sub. (1), it shall schedule the matter for a hearing within 14 days from the time of detention of the subject individual, except as provided in sub. (8) (bg) or (bm) or (l 1) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, county jail or house of correction, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

(d) 1. If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 880.07 (Im) (c) and (cm) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic

medication if, because of chronic mental illness, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

2. **A** finding by the court that there is probable cause to believe that the subject individual meets the commitment standard under sub. (1) (a) 2. e. constitutes a finding that the individual is not competent to refuse medication or treatment under this paragraph.

(dm) The court shall proceed as if a petition were filed under s. 51.45(13) if all of the following conditions are met:

1. The petitioner's counsel notifies all other parties and the court, within a reasonable time prior to the hearing, of his or her intent to request that the court proceed as if a petition were filed under s. 51.45(13).

2. The court determines at the hearing that there is probable cause to believe that the subject individual is a fit subject for treatment under **s.** 51.45(13).

(e) If the court determines that probable cause does not exist to believe the allegations, or to proceed under par. (d), the court shall dismiss the proceeding.

(8) DISPOSITION PENDING HEARING. (a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive trcatmcnt services, on a voluntary basis, from the county department under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of the release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of the conditions. **A** final hearing must be held within 30 days of the order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (7) (c), beginning with the time of the detention. The right to receive treahnent voluntarily or accept treatment as a condition of release under this paragraph does not apply to an individual for whom a probable cause finding has been made, under s. 51.61 (1)(g), that he or she is not competent to refuse medication, to the extent that the treatment includes medication.

(b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may be in a hospital which is approved by the department as a detention facility or under contract with a county department under **s.** 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06(3), state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

(bg) The subject individual, or the individual's legal counsel with the individual's consent, may waive the time periods under s. 51.10 or this section for the probable cause hearing or the final hearing, or both, for a period not to exceed 90 days from the date of the waiver, if the individual and the counsel designated under sub. (4) agree at any time after the commencement of the proceedings that the individual shall obtain treatment under a settlement agreement. The settlement agreement shall be in writing; shall be approved by the court and shall include a trcatment plan that provides for treatment in the least restrictive manner consistent with the needs of the subject individual. Either party may request the court to modify the treatment plan at any time during the 90-day period. The court shall designate the appropriate county department under **s.** 51.42 or 51.437 to monitor the individual's treatment under, and compliance with, the settlement agreement. **If** the individual fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated under sub. (4) and the subject's counsel of the individual's noncompliance.

(bm) If, within 90 days from the date of the waiver under par. (bg), the subject individual fails to comply with the settlemcnt agreement approved by the court under par. (bg), the counsel designated under sub. (4) may file with the court a statement of the facts which constitute the basis for the belief that the subject individual is not in compliance. The statement shall be sworn to be true and may be based on the information and belief of the person filing the statement. Upon receipt of the statement of noncompliance, the court may issue an order to detain the subject individual pending the final disposition. If the subject individual is detained under this paragraph, the court shall hold a probable cause hearing within 72 hours from the time of detention, excluding Saturdays, Sundays and legal holidays or, if the probable cause hearing was held prior to the approval of the settlement agreement under par. (bg), the court shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested later than 5 days after the time of detention under this paragraph, but not less than 48 hours before the time of the final hearing, the final hearing shall be held within 21 days from the time of detention. The facts alleged as the basis for commitment prior to the waiver of the time periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing under this paragraph.

(br) Upon the motion of the subject individual, the court shall hold a hearing on the issue of noncompliance with the settlement agreement within 72 hours from the time the motion for a hearing under this paragraph is filed with the court, excluding Saturdays, Sundays and legal holidays. The hearing under this paragraph may be held as part of the probable cause or final hearing if the probable cause or final hearing is held within 72 hours from the time the motion is filed with the court, excluding Saturdays, Sundays and legal holidays. At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted under par. (bm) shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the subject individual denies any of the facts as stated in the statement, he or she has the burden of proving that the facts are false by a preponderance of the evidence.

(c) During detention a physician may order the administration of such medication or treatment as is permitted under s. 51.61 (1) (g) and (h). The subjcct individual may consent to treatment but only after he or she has been informed of his or her right to refuse treatment and has signed a written consent to such treatment, except that an individual for whom, under s. 51.61 (1) (g), a probable cause finding has been made that he or she is not competent to refuse medication may not consent to medication under this paragraph. A report of all treatment which is provided, along with any written consent, shall be filed with the court by the director of the treatment facility in which the subject individual is detained; or his or her designee.

(9) EXAMINATION. (a) 1. If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint ***2*** licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians, to personally examine the subject individual. The examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subjcct individual. The examiners may not be rclatcd to the

subject individual by blood, marriage, or adoption and may not have any interest in his or her property.

2. One of the examiners appointed under subd. 1. may be selected by the subject individual if the subject individual makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of subd. 1. or the subject individual's selection is not available.

3. If requested by the subject individual, the individual's attorney, or any other interested party with court permission, the individual has a right at his or her own expense or, if indigent and with approval of the court hearing the petition, at the reasonable expense of the individual's county of legal residence, to secure an additional medical or psychological examination and to offer the evaluator's personal testimony as evidence at the hearing.

4. Prior to the examination, the subject individual shall be informed that his or her statements can be used as a basis for commitment, that he or she has the right to remain silent and that the examiner is required to make a report to the court even if the subject individual remains silent. The issuance of such a warning to the subject individual prior to each examination establishes a presumption that the individual understands that he or she need not speak to the examiner.

5. The cxaminers shall personally observe and examine the subject individual at any suitable place and satisfy themselves, if reasonably possible, as to the individual's mental condition, and shall make independent reports to the court. The subject individual's treatment records shall be available to the examiners. If the subject individual is not detained pending the hearing, the court shall designate the time and place where the examination is to be held and shall require the individual's appearance. **A** written report shall be made of all such examinations and filed with the court. The report and testimony, if any, by the examiners shall be based on beliefs to a reasonable degree of medical certainty, or professional certainty if an examiner is a psychologist, in regard to the existence of the conditions described in sub. (1), and the appropriateness of various treatment modalities or facilities. If the examiners are unable to make conclusions to a reasonable degree of medical or professional certainty, the cxaminers shall so state in their report and testimony, if any.

(b) If the examiner determines that the subject individual is a proper subject for treatment, the examiner shall make a recommendation concerning the appropriate level of treatment. Such recommendation shall include the level of inpatient facility which provides the least restrictive environment consistent with the needs of the individual, if any, and the name of the facility where the subject individual should be received into the mental health system. The court may, prior to disposition, order additional information concerning such recommended level of treatment to be provided by the staff of the appropriate county department under **s.** 51.42 or 51.437, or by the staff of a public treatment facility if the subject individual is detained there pending the final hearing.

(c) On motion of either party, all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical evidence in the prescncc of a person designated by the court. The order shall specify the time, place and manner of making the inspection, copies, photographs, or transcriptions, and may prescribe such terms and conditions as are just. The court may, if the motion is made by the subject individual, delay the hearing for such period as may be necessary for completion of discovery.

(10) HEARING. (a) Within a reasonable time prior to the final hearing, the petitioner's counsel shall notify the subject individual and his or her counsel of the time and place of final hearing. The court may designate additional persons to receive notice of the time and place of the final hearing. Within a reasonable time prior to the final hearing, each party shall notify all other parties of all witnesses he or she intends to call at the hearing and of the substance of their proposed testimony. The provision of notice of potential witnesses shall not bar either party from presenting a witness at the final hearing whose name was not in the notice unless the presentation of the witness without notice is prejudicial to the opposing party.

(b) Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing.

(c) The court shall hold a final hearing to determine if the allegations specified in sub. (1) are true. Except as otherwise provided in this chapter, the rules of evidence in civil actions and s. 801.01 (2) apply to any judicial proceeding or hearing under this chapter. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

(cm) Prior to or at the final hearing, for individuals for whom a petition is filed under sub. (1) (a) 2. e., the county department under s. 51.42 or 51.437 shall furnish to the court and the subject individual an initial recommended written treatment plan that contains the goals of treatment, the type of trcatmcnt to be provided, and the expected providers. The treatment plan shall address the individual's needs for inpatient care, residential services, community support services, medication and its monitoring, case management, and other services to enable the person to live in the community upon release from an inpatient facility. The treatment plan shall contain information concerning the availability of the needed services and community treatment providers' acceptance of the individual into their programs. The treatment plan is only a recommendation and is not subject to approval or disapproval by the court. Failure to furnish a treatment plan under this paragraph docs not constitute grounds for dismissal of the petition unless the failure is made in bad faith.

(d) In the event that the subject individual is not detained and fails to appear for the final hearing the court may issue an order for the subject individual's detention and shall hold the final commitment hearing within 7 days from the time of detention.

(e) At the request of the subject individual or his or her counsel the final hearing under par. (c) may be postponed, but in no case may the postponement exceed 7 calendar days from the date established by the court under this subsection for the final hearing.

(11) JURY TRIAL. (a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel if the individual does not object, the court shall direct that a jury of 6 people be selected to determine if the allegations specified in sub. (1) (a), (ar) or (av) are true. **A** jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand. If an inmate of a state prison, county jail or house of correction demands a jury trial within 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison. county jail or house of correction demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

(b) No verdict shall be valid or received unless agreed to by at least 5 of the jurors.

(c) Motions after verdict may be made without further notice upon receipt of the verdict.

(12) OPEN HEARINGS: EXCEPTION. Every hearing which is held under this section shall be open, unless the subject individual or the individual's attorney, acting with the individual's consent, moves that it be closcd. If the hcaring is closed, only persons in

interest, including representatives of providers of service and their attorneys and witnesses may be present. if the subject individual is a minor, every hearing shall be closed unless an open hearing is demanded by the minor through his or her counsel.

(13) DISPOSITION. (a) At the conclusion of the proceedings the court shall:

1. Dismiss the petition; or

2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, proceed under **s.** 51.67 to determine whether the subject individual should receive protective placement or protective services; or

3. If the individual is not an inmate of a state prison, county jail or house of correction and the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate county department under **s.** 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such county department; or

4. If the individual is an inmate of a state prison and the allegations under sub. (1) (a) or (ar) are proven, order commitment to the department and either authorize the transfer of the inmate to a state treatment facility or if inpatient care is not needed authorize treatment on an outpatient basis in the prison; or

4m. If the individual is an inmate of a county jail or house of correction and the allegations under sub. (1) (a) or (av) are proven, order commitment to the county department under **s.** 51.42 or 51.437 serving the inmate's county of residence or, if the inmate is a nonresident, order commitment to the department. The order shall either authorize the transfer of the inmate *to* a state or county treatment facility or, if inpatient care is not needed, authorize treatment on an outpatient basis in the jail or house of correction; or

5. If the allegations specified in sub. (1) (a) are proven and the subject individual is a nonresident, order commitment to the department.

(b) If the petition has been dismissed under par. (a), the subject individual may agree to remain in any facility in which he or she was detained pending the hearing for the period of time necessary for alternative plans to be made for his or her care.

(c) If disposition is made under par. (a) 3.:

1. The court shall designate the facility or service which **is** to receive the subject individual into the mental health system. except that, if the subject individual is under the age of 22 years and the facility is a center for the developmentally disabled, the court shall designate only the central center for the developmentally disabled unless the department authorizes designation of the northern or southern center for the developmentally disabled;

2. The county department under **s.** 51.42 or 51.437 shall arrange for treatment in the least restrictive manner consistent with the requirements of the subject individual in accordance with a court order designating the maximum level of inpatient facility, if any, which may be used for treatment, except that, if the subject individual is under the age of 22 years and the facility is a center for the developmentally disabled, designation shall be only to the central center for the developmentally disabled unless the department authorizes the placement of the individual at the northern or southern center for the developmentally disabled; and

3. The county department under **s.** 51.42 or 51.437 shall report to the court as to the initial plan of treatment for the subject individual.

(cm) If disposition is made under par. (a) 4. or 4m. and the inmate is transferred to a state or county treatment facility, the department or, in the case of a disposition under par. (a) 4m., the county department under **s.** 51.42 or 51.437 may, after evaluating the inmate and developing an appropriate treatment plan; transfer the inmate back to the prison, county jail or house of correction on a conditional basis. The inmate shall be informed of the terms and conditions of the transfer as provided in **s.** 51.35 (1) (a). If the inmate does not cooperate with the treatment or if the inmate is in need of additional inpatient treatment, the department or the county department under s. 51.42 or 51.437 may return the inmate to a state or county treatment facility.

(cr) If the subject individual is before the court on a petition filed under a court order under s. 938.30 *(5)* (c) 1. and is found to have committed a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025, the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(ct) 1m. Except as provided in subd. 2m., if the subject individual is before the court on a petition filed under a court order under **s.** 938.30 *(5)* (c) 1. and is found to have committed any violation, or to have solicited, conspired or attempted to commit any violation, of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the subject individual to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the subject individual report under **s.** 301.45.

2m. If the subject individual is before the court on a petition filed under a court order under s. 938.30 *(5)* (c) 1. and is found to have committed a violation, or to have solicited, conspired, or attempted to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of **s.** 940.30 or 940.31 if the victim was a minor and the subject individual was not the victim's parent, the court shall require the individual to comply with the reporting requirements under s. 301.45 unless the court detennines, after a hearing on a motion made by the individual, that the individual is not required to comply under **s.** 301.45 (Im).

3. In determining under subd. 1m. whether it would be in the interest of public protection to have the subject individual report under **s.** 301.45, the court may consider any of the following:

a. The ages, at the time of the violation, of the subject individual and the victim of the violation.

b. The relationship between the subject individual and the victim of the violation.

c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

e. The probability that the subject individual will commit other violations in the future.

g. Any other factor that the court determines may be relevant to the particular case.

4. If the court orders a subject individual to comply with the reporting requirements under s. 301.45, the court may order the subject individual to continue to comply with the reporting requirements until his or her death.

5. If the court orders a subject individual to comply with the reporting requirements under **s.** 301.45. the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding under s. 938.30 (5) (c) (intro.) on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding has been reversed, set aside or vacated.

(cv) 1. If the court makes the disposition under par. (a) 3., 4., 4m. or 5. and the court determines, based on evidence prescntcd on the issue of the subject individual's dangerousness, that there is a substantial probability that the individual may use a firearm *to* cause physical harm to himself or herself or endanger public safety, the court shall prohibit the individual from possessing a firearm: order the seizure of any firearm owned by the individual and inform the individual of the requirements and penalties under s. 941.29.

2. A prohibition on the possession of a firearm under subd. 1. shall remain in effect until the commitment order and any subsequent consecutive commitment orders expire and the court determines, based on evidence presented on the issue of the subject individual's dangerousness, that there is no longer a substantial probability that the individual may use a firearm to cause physical harm to himself or herself or endanger public safety. If the court makes this determination, it shall cancel the prohibition and order the return of any firearm ordered seized under subd. 1.

3. In lieu of ordering the seizure under subd. 1., the court may designate a person to store the firearm until the prohibition has been canceled under sub. (16) (gm).

4. If the court prohibits a subject individual from possessing a firearm under subd. 1. or cancels a prohibition under subd. 2., the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate involuntary commitment history record search under **s.** 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only as part of an involuntary commitment history record search under s. 175.35 (2g) (c).

(d) A disposition under par. (a) 3., 4., 4m. or 5. may be modified as provided in s. 51.35.

(dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with **s.** 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under **s.** 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. A finding by the court that the allegations under sub. (1) (a) **2.** e. are proven constitutes a finding that the individual is not competent to refuse medication or treatment. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or dcsignce may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). **A** court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and **s.** 51.35 (4).

(e) The petitioner has the burden of proving all required facts by clear and convincing evidence.

(f) The county department under **s.** 51.42 or 51.437 which receives an individual who is committed by a court under par. (a) 3. is authorized to place such individual in an approved treatment facility subject to any limitations which are specified by the court under par. (c) 2. The county department shall place the subject individual in the treatment program and treatment facility which is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The county department shall have ongoing responsibility to review the individual's needs. in accordance with sub. (17), and transfer the person to the least restrictive program consistent with the individual's needs. If the subject individual is under the age of 22 years and if the facility appropriate for placement or transfer is a center for the developmentally disabled, placement or transfer of the individual shall be made only to the central center for the developmentally disabled unless the department authorizes the placement or transfer to the northern or southern center for the developmentally disabled.

(g) 1. Except as provided in subd. 2., the first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year.

2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365–day period.

2d. a. Except as provided in subd. 2d. b., after the 30th day after an order of commitment under par. (a) 3. to 5. following proof of the allegations under sub. (1) (a) 2. e., the subject individual may, under the order, be treated only on an outpatient basis.

b. If a subject individual who is committed under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. e., and who is being treated on an outpatient basis violates a condition of treatment that is established by the court or a county department under **s.** 51.42, the county department or the department may transfer the subject individual under **s.** 51.35 (1) (e) to an inpatient facility or to an inpatient treatment program of a treatment facility for a period not to exceed 30 days.

2g. The total period a person may be committed pursuant to commitments ordered under par. (a) 4. or 4m., following proof of the allegations under sub. (1) (ar) or (av), may not exceed 180 days in any 365–day period.

2m. In addition to the provisions under subds. 1., 2. and 2g., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date of release on parole or extended supervision, as determined under **s.** 302.11 or 302.113. whichever is applicable.

2r. Twenty-one days prior to expiration of the period of commitment under subd. 1., 2., 2g. or 2m., the department, if the individual is committed to the department, or the county department to which an individual is committed shall file an evaluation of the individual and the recommendation of the department or county department regarding the individual's recommitment with the committing court and provide a copy of the evaluation and recommendation to the individual's counsel and the counsel designated under sub. (4). If the date for filing an evaluation and recommendation under this subdivision falls on a Saturday, Sunday or legal holiday, the date which is not a Saturday, Sunday or legal holiday and which most closely precedes the evaluation and recommendation filing date shall be the filing date. A failure of the department or the county department to which an individual is committed to file an evaluation and recommendation under this subdivision does not affect the jurisdiction of the court over a petition for recommitment.

3. The county department under s. 51.42 or 51.437 to whom the individual is committed under par. (a) 3. may discharge the individual at any time, and shall place a committed individual in accordance with par. **(9.** Upon application for extension of a commitment by the department or the county department having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a) 1. and evidences the conditions under sub. (1) (a) 2. or (am) or is a proper subject for commitment as prescribed in sub. (1) (ar) or (av), it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

(h) Any disposition of a minor under this subsection may extend beyond the age of majority of the individual, if the disposition is otherwise made in accordance with this section.

(14) TRANSPORTATION; EXPENSES. The sheriff or any law enforcement officer shall transport an individual who is the subject of a petition and execute the commitment. or any competent relative, friend or member of the staff of a treatment facility may assume responsibility for the individual and transport him or her to the inpatient facility. The director of the county department

under s. 51.42 or 51.437 may request the sheriff to provide transportation for a subject individual or may arrange any other method of transportation which is feasible. The county department may provide reimbursement for the transportation costs from its budgeted operating funds.

(5) APPEAL. An appeal may be taken to the court of appeals within the time period specified in s. 808.04 (3) in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

(d) REEXAMINATION OF PATIENTS. (a) Except in the case of alcoholic commitments under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's o m verified petition, except in the case of a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

(b) A petition under this subsection may be filed with the court assigned to exercise jurisdiction over probate matters, either for the county from which the patient is committed or for the county in which the patient is detained.

(c) If a hearing has been held with respect to the subject individual's commitment within 30 days of the filing of a petition under this subsection, no hearing shall be held. If such a hearing has not been held within 30 days of the filing of a petition. but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 7 days by the appropriate county department under s. 51.42 or 51.437. A hearing may then be held in the court's discretion. If such a hearing has not been held within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.

(d) Reexaminations under this subsection are subject to the standards prescribed in sub. (13) (g).

(e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (9) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (2).

(f) If a patient is involuntarily committed and placed in a hospital, a notice of the appointment of the examining physicians and copies of their reports shall be furnished to such hospital by the court.

(g) Upon the filing of the examiners' reports the court shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner, the treatment facility, the patient's legal counsel and the guardian of the patient, if any, and may notify any known relative of the patient. Subsections (10) to (13) shall govern the procedure to be used in the conduct of the hearing, insofar as applicable. The privileges provided in ss. 905.03 and 905.04 shall apply to reexamination hearings.

(gm) Upon a request under par. (a), a court may cancel the prohibition under sub. (13) (cv) 1. if the court determines, based on evidence presented on the issue of the subject individual's dangerousness, that there no longer is a substantial probability that the individual may use a firearm to cause physical harm to himself or herself or endanger public safety. If a court cancels a prohibition under sub. (13) (cv) 1. under this paragraph, the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate involuntary commitment record search under s. 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court.

(h) All persons who render services in such proceedings shall receive compensation as provided in sub. (18) and all expenses of such proceedings shall be paid and adjusted as provided in sub. (18).

(i) Subsequent reexaminations may be had at any time in the discretion of the court but may be compelled after 120 days of the preceding examination in accordance with this subsection. All petitions for reexamination must be heard within 30 days of their receipt by the court.

(j) This subsection applies to petitions for reexamination that are filed under ch. 971, but not s. 971.17, and ch. 975, except that the petitions shall be filed with the committing court.

(k) Any order of a county department under s. 51.42 or 51.437 is subject to review by the court assigned to exercise probate jurisdiction upon petition under this subsection.

(L) The pendency of an appeal in either the court of appeals or the supreme court does not deprive the circuit court of jurisdiction to conduct reexamination proceedings under this section with respect to the individual who is the subject of the appeal.

(17) RIGHT TO REEVALUATION. With the exception of alcoholic commitments under s. 51.45 (13), every patient committed involuntarily to a board under this chapter shall be reevaluated by the treatment staff or visiting physician within 30 days after the commitment, and within 3 months after the initial reevaluation, and again thereafter at least once each 6 months for the purpose of determining whether such patient has made sufficient progress to be entitled to transfer to a less restrictive facility or discharge. The findings of such reevaluation shall be written and placed with the patient's treatment record, and a copy shall be sent to the board which has responsibility for the patient and to the committing court.

(18) FEES OF EXAMINERS. WITNESSES; EXPENSES OF PROCEEDINGS. {a) Unless previously fixed by the county board of supervisors in the county in which the examination is held, the examiners shall rcccivc a fee as fixed by the court for participation in commitment proceedings, and reasonable reimbursement for travel expenses.

(b) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases.

(c) Expenses of the proceedings from the presentation of the statement of emergency detention or petition for commitment to the conclusion of the proceeding shall be allowed by the court and paid by the county from which the subject individual is detained, committed or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.64 (1). Payment of attorney fees for appointed attorneys in the case of children and indigents shall bc in accordance with ch. 977.

(d) If the subject individual has a legal residence in a county other than the county from which he or she is detained, committed or discharged, that county shall reimburse the county from which the individual was detained, committed or discharged for all expenses under pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the detaining, committing or discharging county and assessing such costs against the county of legal residence or against the state at the time of the next apportionment of charges and credits under s. 70.60.

(19) DEPARTMENTAL DUTIES. (a) Prior to filing a petition for commitment of an inmate under sub. (1) (ar) the department shall:

1. Attempt to use less restrictive fonns of treatment with the individual. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the prison or voluntary transfer to a state treatment facility, including an admission which meets the requirements of s. 51.10 (4m).

2. Ensure that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist.

(b) The department shall promulgate rules:

1. Establishing standards for the use of psychotropic drugs on prisoners in a state prison and inmates committed under sub. (1) (ar).

Im. Establishing standards and procedures for use of and periodic review of the use of psychotropic drugs on inmates in a county jail or house of correction who are being treated in the jail or house of correction under a commitment based on a petition under sub. (1) (a) or (av).

2. Providing for the periodic review and evaluation of the appropriateness of and the need for the use of psychotropic drugs on, and the need for the continuation of treatment for, each inmate committed under sub. (1) (ar).

3. Needed to carry out its duties under par. (a).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300.336. 356: 1981 c. 20, 367; 1981 c. 390 s. 252; 1953 a. 27.219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176.321, 332; 1957 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366. 394, 403; 1959 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162: 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a 38, 61, 109.

Cross Reference: See also s. DOC 314.01, Wis. adm. code.

NOTE: 1987 Wis. Act 366, which amended this section, contains notes by the Legislative Council following many of the statutes affected.

NOTE: 1987 Wis. Act 394, which affected this section, contains a prefatory note and notes following the sections.

Judicial Council Committee's Note, 1981: The final sentence of sub. (1) (am) allows the court to consider the subject individual's conduct during or subsequent to the crime as "recent" for purposes of involuntary civil commitment under this section, if the individual is proceeded against during, or immediately upon discharge from, a commitment for examination or treatment for incompetency to proceed as a criminal defendant. The relevancy of evidence of tlie individual's conduct prior to the crime is to be determined by the court. The revised statute requires the subject individual's dangerousness to be evidenced by acts. attempts, threats, omissions or behavior referred to in sub. (1) (a) 2. Prior law allowed commitment of such an individual upon a showing that there **was** a substantial likelihood, based on the treatment record, that he or she would be a proper subject for commitment if treatment were withdrawn. [Bill 765-A]

Judicial Council Note, 1988: The amendment to sub. (2) allows notice of hearings to he given by telephone. The time at which such notice **is** given and the person to whom it is given must be noted in the case file. [Re Order effective Jan. 1, 1988]

The role of an attorney appointed under sub. (4), 1975 stats., [now (3)] is discussed. State ex rel. Mcmmel v. Mundy, 75 Wis. 2d 276. 249 N.W.2d 573 (1977).

The due process standard for hearings under this section is more flexible than the standard for criminal proceedings. In Matter of Parham, 95 Wis. 2d 21, 289 N.W.2d 326 (Ct. App. 1979).

The 14-day time limit in sub. (7) (c) **is** mandatoiy and refers to calendar days, not business days. State ex rel. Lockman v. Gerliardstein, 107 Wis. 2d 325, 320 N.W.2d 27 (Ct. App. 1982).

Criminal and civil commitments are not substantially the same. State v. Smith, I13 Wis. 2d 497, 335 N.W.2d 376 (1983).

A person may be a proper subject for treatment even though a cure **is** unlikely. In Matter of Mental Condition of C.J. 120 Wis. 2d 355, 354 N.W.2d 219 (Ct. App. 1984).

The 45-day limit in sub. (13) (g) 2. applies only to an original commitment order and does not bar subsequent extensions of the order. In Matter of M.J. 122 Wis. 2d 525, 362 N.W.2d 190 (Ct. App. 1984).

The use of telephone testimony by physicians did not a violate the petitioner's due process rights. In Matter of W.J.C. 124 Wis. 2d 238, 369 N.W.2d 162 (Ct. App. 1985).

Hearings under sub. (12) are open unless tlie court grants the subject individual's motion for closure. Wisconsin State Journal **v.** Circuit Court for Dane County, **131** Wis. 2d 515, 389 N.W.2d 73 (Ct. App. 1986).

An individual's counsel may not withdraw a jury demand without the individual's consent. In Matter of S.B., 138 Wis. 2d 409, 406 N.W.2d 408 (1987).

Sub. (13) (c) 2. does not permit the committing court to specify a treahnent method in addition to the facility. In Matter of J.R.R. 145 Wis. 2d 431.427 N.W.2d 137 (Ct. App. 1988).

Under sub. (13) (g) 3. an individual has a right to a jury trial in proceedings to extend a commitment. In Matter of Mental Condition of G.O.T. I51 Wis. 2d 629, 445 N.W.2d 697 (Ct. App. 1989).

There is a bright line rule prohibiting a circuit court from accepting petitions drafted by persons not authorized to do *so* under sub. (4). In Matter of S.P.B. 159 Wis. 2d 393.464 N.W.2d 102 (Ct. App. 1990).

The services of appointed counsel for non-indigent individuals in civil commitment hearing should hc paid for by the county. Stare ex. rel. Chiarkas **v.** Skow, 160 Wis. 2d 123, 465 N.W.2d 625 (1991).

The assurance of representation by adversary counsel under sub. (3) does not preclude self-representation when a waiver of counsel is knowingly and competently made. In Matter of Condition of S.Y. 162 Wis. 2d 320, 469 N.W.2d 836 (1991).

The sub. (16) (c) provision for a hearing on a petition within 30 days of filing is directory and violation is not grounds for release. State v. R.R.E. 162 Wis. 2d 698, 470 N.W.2d 283 (1991).

When a recommitment hearing under sub. (13) (g) 3. is before the same judge **who** conducted the original commitment proceeding, a rcqucst for substitution under s. 801.58 is not allowed. Serocki v. Circuit Court for Clark County, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

Sub. (15) does not authorize the appeal of a court commissioner's order to the court of appeals: proper review **is** a new hearing by the circuit court. In Matter of Mental Condition of C.M.B. 165 Wis. 2d 703, 478 N.W.2d 385 (1992).

An involuntary commitment may not be ordered on summary judgment. Matter of Menial Condition of Shirley J.C. 172 Wis. 2d 371, 493 N.W.2d 382 (Ct. App. 1992).

A probable cause determination made by a court commissioner under sub. (7) may be reviewed by the circuit court, but nothing gives the subject a right to review. Factors to consider in deciding whether to grant review are discussed. Milwaukee County v. Louise M. 205 Wis. 2d 162.555 N.W.2d 807 (1996).

The 14-day deadline under sub. (7) (c) is subject to reasonable extension when the need for the extension is caused solely by the conduct and manipulation of tlie detained subject. County of Milwaukee v. Edward S. 2001 WI App 169, 247 Wis. 2d 87.633 N.W.2d 241.

By expressing the time requirement in sub. (7) (a) in terms of hours rather than days, the legislature manifested its intent that the clock start running immediately "after the individual amves at the facility." rather than the next day. The "exclude-. the-firs-day" rule of s. 990.001 (4) (a) and (d) does not apply in the context of this section under which 72 hours means 72 hours. Matter of the Mental Commitment of Ryan E. M. 2002 WI App 71, 252 Wis. 2d 490, 642 N.W.2d 592.

Sub. (1) (a) 2. e. is constitutional. It does not: 1) allow involuntary commitment upon a finding of mental illness alone and contains an ascertainable standard of commitment, and thus is not vague or overbroad; 2) create a class of persons who can he involuntarily committed upon **a** finding of mere mental or emotional hann, and thus does not violate equal protection; and 3) violate substantive due process because the constitution does not require proof of imminent physical harm prior to commitment for treatment. State **v.** Dennis H. 2002 WI 104, ___ Wis. 2d ___, 647 N.W.2d 851.

Under sub. (2), a court can entertain proceedings for involuntary commitment of a person admitted as a voluntary inpatient. 68 Atty. Gen. 97.

Sub. (14) requires a sheriff to transport the subject of a petition under **s.** 51.20 at all stages of the proceedings, regardless of reimbursement. 68 Atty. Fen. 225.

An individual in the custody of a sheriff for transport to, from, and during an involuntary commitment hearing has rights to the least restrictive restraint appropriate. 71 Atty. Gen. 183.

The duties and obligations of a corporation counsel in involuntary civil commitment proceedings under this chapter are discussed. 79 Atty. Gen. 129.

Under sub. (14), the director of the county department under **s.** 51.42 or 51.437 may request the sheriff of the county in which an individual was placed under emergency detention to transport that individual to another designated inpatient facility prior to the initial court hearing under ch. 51, and the sheriff must do ***so*** within a reasonable time. 80 Atty. Gen. 299.

The state cannot confine, without more, nondangerous persons capable of surviving safely in freedom alone or with help from family or friends. O'Connor v. Donaldson: 422 U.S. 563.

Due process does not require states to use the "beyond **a** reasonable doubt" standard in civil commitment proceedings. Addington v. Texas, *441 U.S. 416 (1979).*

In signing a commitment application. a county employee was in essence acting as a witness in a judicial proceeding and as such was entitled to immunity. Martens v. Tremble, 481 F. Supp. 831 (1979).

Persons confined in a state hospital under **ss.** 51.20, 51.37. 971.14, 971.17 and 975.06 are being subjected to punishment within the meaning of the cruel and unusual punishment clause. Flakes v. Percy, 511 **F.** Supp. 1325 (1981).

The privilege against self-incrimination in civil commitment proceedings. 1980 WLR 697.

51.22 Care and custody of persons. (1) Except as provided in s. 51.20 (13) (a) 4. or 5., any person committed under this chapter shall be committed to the county department under s. 51.42 or 51.437 serving the person's county of residence, and such county department shall authorize placement of the person in an appropriate facility for care, custody and treatment according to s. 51.42 (3) (as) 1. or 51.437 (4rm) (a).

(2) Except as provided in s. 51.13 (2), voluntary admissions under ss. 51.10, 51.13, and 51.45 (10) shall be through the county department under s. 51.42 or 51.437 serving the person's county of residence, or through the department if the person to be admitted is a nonresident of this state. Admissions through a county department under s. 51.42 or 51.437 shall be made in accordance with s. 51.42 (3) (as) 1. or 51.437 (4rm) (a). Admissions through the department shall be made in accordance with sub. (3).

(3) Whenever an admission is made through the department, the department shall determine the need for inpatient care of the individual to be admitted. Unless a state-operated facility is used, the department may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a county department under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (7) (da). For collections made under the authority of s. 46.10 (16), moneys shall be credited or remitted to the department no later than 60 days

after the month in which collections are made. Such collections are also subject to s. 46.036 or special agreement. Collections made by the department under ss. 46.03 (18) and 46.10 shall be deposited in the general fund.

(4) If a patient is placed in a facility authorized by a county department under s. 51.42 and such placement is outside the jurisdiction of that county department under s. 51.42, the placement does not transfer the patient's legal residence to the county of the facility's location while such patient is under commitment.

(5) The board to which a patient is committed shall provide the least restrictive treatment alternative appropriate to the patient's needs, and movement through all appropriate and necessary treatment components to assure continuity of care.

History: 1975 c. **430;** 1977 c. 428; 1983 a. 27 s. 2202 (20); 1983 a. 474; 1985 a. 176; 1989 a. 31: 2001 a. **16.**

The standard for determining whether the state has adequately protected a patient's rights is whether professional judgment was in fact exercised. Youngberg v. Romeo. 457 U.S. 307 (1982).

51.30 Records. (1) DEFINITIONS. In this section:

(a) "Registration records" include all the records of the department, county dcpartmcnts under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments or facilities which identify individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism or drug dependence.

(bj "Treatment records" include the registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which arc maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.

(2) INFORMED CONSENT. **An** informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must bc in writing and must contain the following: the name of the individual, agency, or organization to which the disclosure is to be made; the name of the subject individual whose treatment record is being disclosed; the purpose or need for the disclosure; the specific type of information to be disclosed; the time period during which the consent is effective; the date on which the consent is signed; and the signature of the individual or person legally authorized to give consent for the individual.

(3) ACCESS TOCOURTRECORDS. (a) Except as provided in pars. (b) and (c), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

(b) An individual's attorney or guardian ad litem and the corporation counsel shall have access to the files and records of the court proceedings under this chapter without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, or commitment under this chapter or ch. 971 or 975.

(c) The files and records of court proceedings under this chapter may be released to other persons with the informed written consent of the individual, pursuant to lawful order of the court which maintains the records or under s. 51.20 **(13)** (cv) 4. or (16) (gm).

(d) The department of corrections shall have access to the files and records of court proceedings under this chapter concerning an individual required to register under s. 301.45. The department of corrections may disclose infomation that it obtains under this paragraph as provided under s. 301.46.

(4) ACCESS TO REGISTRATION AND TREATMEKT RECORDS. (a) *Confidentiality of records.* Except as othenvise provided in this chapter and ss. 118.125(4), 610.70 (3) and (5), 905.03 and 905.04, all treatment records shall remain confidential and are privileged to the subject individual. Such records may be released only to the persons designated in this chapter or ss. 118.125 (4), 610.70 (3) and (5), 905.03 and 905.04, or to other designated persons with the informed written consent of the subject individual as provided in this section. This restriction applies to elected officials and to members of boards appointed under s. 51.42 (4) (a) or 51.437 (7) (a).

(h) *Access without informed written consent.* Notwithstanding par. (a), treatment records of an individual may be released without informed written consent in the following circumstances, except as restricted under par. (c):

1. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits, financial audits, or program monitoring and evaluation. Information obtained under this paragraph shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individual whose records are being released. The department shall promulgate rules to assure the confidentiality of such information.

2. To the department, the director of a county department under s. 51.42 or 51.437, or a qualified staff member designated by the director as is necessary for, and only to be used for, billing or collection purposes. Such information shall remain confidential. The department and county departments shall develop procedures to assure the confidentiality of such infomiation.

3. For purposes of research as permitted in s. 51.61 (1) (jj and (4) if the research project has been approved by the department and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the infomiation will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal infomation that may serve to identify the individual whose trcatment records are being released under this subsection without the informed written consent of the individual. Such information shall remain confidential. In approving research projects under this subsection, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

4. Pursuant to lawful order of a court of record.

5. To qualified staff members of the department, to the director of the county department under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the director as is necessary to determine progress and adequacy of trcatmcnt, to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility or for the purposes of s. 51.14. Such information shall remain confidential. The department and county departments under s. 51.42 or 51.437 shall develop procedures to assure the confidentiality of such infonnation.

6. Within the treatment facility where the subject individual is receiving treatment confidential information may be disclosed to individuals employed, individuals serving in bona fide training programs or individuals participating in supervised volunteer programs. at the facility when and to the extent that performance of their duties requires that they have access to such information.

7. Within the department to the extent necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse of individuals who have been committed to or who are under the supervision of the department. The department shall promulgate rules to assure the confidentiality of such information.

8. To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious

to the patient's health. Such disclosure shall be limited to that part of the records necessary to meet the medical emergency.

8m. To appropriate examiners and facilities in accordance with **s.** 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) or 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

9. To a facility which is to receive an individual who is involuntarily committed under this chapter, ch. 48, 971 or 975 upon transfer of the individual from one treatment facility to another. Release of records under this subdivision shall be limited to such treatment records as are required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but it may not include the patient's complete treatment record. The department shall promulgate rules to implement this subdivision.

10. To a correctional facility or to a probation, extended supervision and parole agent who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment under this chapter in a program that is operated by, or is under contract with, the department or a county department under **s.** 51.42 or 51.437, or in a treatment facility, as a condition of the probation, extended supervision and parole supervision plan, or whenever such an individual is transferred from a state or local correctional facility to such a treatment program and is then transferred back to the correctional facility. Every probationer, parolee or person on extended supervision who receives evaluation or treatment under this chapter shall be notified of the provisions of this subdivision by the individual's probation, extended supervision and parole agent. Rcleasc of records under this subdivision is limited to:

a. The report of an evaluation which is provided pursuant to the written probation, extended supervision and parole supervision plan.

b. The discharge summary, including a record or summary of all somatic treatments, at the termination of any treahnent which is provided as part of the probation, extended supervision and parole supervision plan.

c. When an individual is transferred from a treatment facility back to a correctional facility, the information provided under subd. 10. d.

d. Any information necessary to establish, or to implement changes in, the individual's treatment plan or the level and kind of supervision on probation, extended supervision or parole, as determined by the director of the facility or the treatment director. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only. In cases involving a person on probation, extended supervision or parole, disclosure shall be made to a probation, extended supervision and parole agent only. The department shall promulgate rules governing the release of records under this subdivision.

10m. To the department of justice or a district attorney under s. 980.015 (3) (b), if the treatmcnt records are maintained by an agency with jurisdiction, as defined in s. 980.015 (l), that has control or custody over a person who may meet the criteria for commitment as a sexually violent person under ch. 980.

11. To the subject individual's counsel or guardian ad litem and the corporation counsel, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention. admission, commitment, or patients' rights under this chapter or ch. 48,971, or 975.

11m. To the guardian ad litem of the unborn child, as defined in s. 48.02 (19), of a subject individual, without modification. at any time to prepare for proceedings under **s.** 48.133.

12. To a correctional officer of the department of corrections who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility. Records released under this subdivision arc limited to notice of the subject individual's change in status.

12m. To any person if the patient was admitted under **s.** 971.14, 971.17 or 980.06 or ch. 975 or transferredunder **s.** 51.35 (3) or 51.37 and is on unauthorized absence from a treatment facility. Information released under this subdivision is limited to information that would assist in the apprehension of the patient.

13. To the parents, children or spouse of **an** individual who is or was a patient at an inpatient facility, to a law enforcement officer who is seeking to determine whether an individual is on unauthorized absence from the facility, and to mental health professionals who are providing treatment to the individual at the time that the information is released to others. Information released under this subdivision ***is*** limited to notice as to whether or not an individual is a patient at the inpatient facility.

15. To personnel employed by a county department under **s.** 46.215, 46.22, 51.42 or 51.437 in any county where the county department has established and submitted to the department a written agreement to coordinate services to individuals receiving services under this chapter. This information shall be released upon request of such county department personnel, and may be utilized only for the purposes of coordinating human services delivery and case management. This information shall remain confidential, and shall continue to be governed by this section. Information may be released under this subdivision only if the subject individual has received services through a county department under **s.** 51.42 or 51.437 within 6 months preceding the request for information, and the information **is** limited to:

a. The subject individual's name, address, age, birthdatc, sex, client–identifying number and primary disability.

b. The type of service rendered or requested to be provided to the subject individual, and the dates of such service or request.

c. Funding sources, and other funding or payment information.

16. If authorized by the secretary or his or her designee, to a law enforcement agency upon request if the individual was admitted under ch. 971 or 975 or transferred under **s.** 51.35 (3) or 51.37. Information released under this subdivision is limited to the individual's name and other identifying information, including photographs and fingerprints, the branch of the court that committed the individual, the crime that the individual is charged with, found not guilty of by reason of mental disease or defect or convicted of, whether or not the individual is or has been authorized to leave the grounds of the institution and information as to the individual's whereabouts during any time period. In this subdivision "law enforcement agency" has the meaning provided in **s.** 165.83 (1) (b).

17. To the county agency designated under **s.** 46.90 (2) or other investigating agency under **s.** 46.90 for the purposes of s. 46.90 (4) (a) and (5), to the county department, as defined in s. 48.02 (2g), or the sheriff or police department for the purposes of **s.** 48.981 ***(2)*** and (3) or to the county protective services agency designated under **s.** 55.02 for purposes of s. 55.043. The treatmcnt record holder may release treatment record information by initiating contact with the county protective services agency or county department, as defined in s. 48.02 (2g), without first receiving a request for release of the treatment record from the county protective services agency or county department.

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

b. Except as provided in subd. 18. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any,

for the purpose of protecting and advocating the rights of persons with developmental disabilities, as defined under **s.** 51.62 (1) (am), or mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under **s.** 880.33, or if the patient is a minor with developmental disability who has a parent or has a guardian appointed under **s.** 48.831 and does not have a guardian appointed under **s.** 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 18. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under **s.** 48.831 and does not have a guardian appointed under **s.** 880.33, the name, address and telephone number of the parent or guardian appointed under **s.** 48.831 of the patient.

d. Except as provided in subd. 18. e., any staff member who wishes to obtain additional information about a patient described in subd. 18. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that arc specified in subd. 18. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good--faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian. as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

19. To state and local law enforcement agencies for the purpose of reporting an apparent crime committed on the premises of an inpatient treatment facility or nursing home, if the facility or home has treatment records subject to this section, or observed by staff or agents of any such facility or nursing home. Information released under this subdivision is limited to identifying information that may be released under subd. 16. and information related to the apparent crime.

20. Except with respect to the treatment records of a subject individual who *is* receiving or has received services for alcoholism or drug dependence, to the spouse, parent, adult child or sibling of a subject individual, if the spouse, parent, adult child or sibling is directly involved in providing care to or monitoring the treatment of the subject individual and if the involvement is verified by the subject individual's physician, psychologist or by a person other than the spouse, parent, adult child or sibling who is responsible for providing treatment to the subject individual, in order to assist in the provision of care or monitoring of treatment. Except in an emergency as determined by the person verifying the involvement of the spouse, parent, adult child or sibling, the request for treatment records under this subdivision shall be in writing, by the requester. Unless the subject individual has been adjudged incompetent under ch. 880, the person verifying the involvement of the spouse, parent, adult child or sibling shall notify the subject individual about the release of his or her treatment records under this subdivision. Treatment records released under this subdivision are limited to the following:

a. A summary of the subject individual's diagnosis and prognosis.

b. A listing of the medication which the subject individual has received and is receiving.

c. A description of the subject individual's treatment plan.

21. To a mental health review officer for the purposes of **s.** 51.14.

22. To a representative of the board on aging and long--term care, in accordance with **s.** 49.498 (5) (e).

23. To the department under **s.** 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 51.64 (2) (a).

24. To the department of corrections for the purpose of obtaining information concerning a person required to register under **s.** 301.45. The department of corrections may disclose information that it receives under this subdivision as provided under **s.** 301.46.

25. If the treatment records do not contain information and the circumstances of the release do not provide information that would permit the identification of the individual.

26. To the department of corrections or *to* a sheriff, to determine if a person incarcerated is complying with the assessment or the driver safety plan ordered under s. 343.30 (1q) (c).

(c) *Limitation on release of alcohol and drug treatment records.* Notwithstanding par. (b), whenever federal law or applicable federal regulations restrict: or as a condition to receipt of federal aids require that this state restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency in a program or facility to a greater extent than permitted under this section, the department may by rule restrict the release of such information as may be necessary to comply with federal law and regulations. Rules promulgated under this paragraph shall supersede this section with respect to alcoholism and drug dependency treatment records in those situations in which they apply.

(d) *Individual access.* 1. Access to treatment records by a subject individual during his or her treatment may be restricted by the director of the treatment facility. However: access may not be denied at any time to records of all medications and somatic treatments received by the individual.

2. The subject individual shall have a right, following discharge under s. 51.35 (4), to a complete record of all medications and somatic treatments prescribed during admission or commitment and to a copy of the discharge summary which was prepared at the time of his or her discharge. **A** reasonable and uniform charge for reproduction may be assessed.

3. In addition to the information provided under subd. 2., the subject individual shall, following discharge, if the individual so requests, have access to and have the right to receive from the facility a photostatic copy of any or all of his or her treatment records. **A** reasonable and uniform charge for reproduction may be assessed. The director of the treatment facility or such person's designee and the treating physician have a right to be present during inspection of any treatment records. Notice of inspection of treatment records shall be provided to the director of the treatment facility and the treating physician at least one full day, excluding Saturdays, Sundays and legal holidays, before inspection of the records is made. Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave

information subject to the condition that his or her identity remain confidential. Entire documents may not be withheld in order to protect such confidentiality.

4. At the time of discharge all individuals shall be informed by the director of the treatment facility or such person's designee of their rights as provided in this subsection.

(dm) *Destruction, damage, falsification or concealment of treatment records.* No person may do any of the following:

1. Intentionally falsify a treatment record.

2. Conceal or withhold a treatment record with intent to prevent its release to the subject individual under par. (d), to his or her guardian appointed under ch. 880 or to persons with the informed written consent of the subject individual or with intent to prevent or obstruct an investigation or prosecution.

3. Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

(e) *Notation of release of information.* Each time written information is released from a treatment record, a notation shall be made in the record by the custodian thereof that includes the following: the name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The subject individual shall have access to such release data as provided in par. (d).

(f) *Correction of information.* A subject individual, or the parent, guardian or person in the place of a parent of a minor, or the guardian of an incompetent may, after having gained access to treatment records, challenge the accuracy, completeness, timeliness, or relevance of factual information in his or her treatment records and request in writing that the facility maintaining the record correct the challenged information. Such request shall be granted or denied within 30 days by the director of the treatment facility, the director of the county department under s. 51.42 or 51.437, or the secretary depending upon which person has custody of the record. Reasons for denial of the requested changes shall be given by the responsible officer and the individual shall be informed of any applicable grievance procedure or court review procedure. If the request is denied, the individual, parent, guardian or person in the place of a parent shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become a part of the record and shall be released whenever the information at issue is released.

(g) *Applicability.* Paragraphs (a), (b), (c), (dm) and (e) apply to all treatment records, including those on which written. drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

(5) MINORS AND INCOMPETENTS. (a) *Consent for release of information.* The parent, guardian, or person in the place of a parent of a minor or the guardian of an adult adjudged incompetent under ch. 880 may consent to the release of confidential information in court or treatment records. A minor who is aged 14 or more may consent to the release of confidential information in court or treatment records without the consent of the minor's parent, guardian or person in the place of a parent. Consent under this paragraph must conform to the requirements of sub. (2).

(b) *Access to information.* 1. The guardian of an individual who is adjudged incompetent under ch. 880 shall have access to the individual's court and treatment records at all times. The parent, guardian or person in the place of a parent of a developmentally disabled minor shall have access to the minor's court and treatment records at all times except in the case of a minor aged 14 or older who files a written objection to such access with the custodian of the records. The parent, guardian or person in the place of a parent of other minors shall have the same rights of access as provided to subject individuals under this section.

2. A minor upon reaching the age of 14 shall have access to his or her own court and treatment records, as provided in this section. A minor under the age of 14 shall have access to court records but only in the presence of parent, guardian, counsel, guardian ad litem or judge and shall have access to treatment records as provided in this section but only in the presence of parent, guardian, counsel, guardian ad litem or staff member of the treatment facility.

(bm) *Parents denied physical placement.* A parent who has been denied periods of physical placement with a child under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian under pars. (a) and (b) with respect to access to that child's court or treatment records.

(c) *Juvenile court records.* The court records of juveniles admitted or committed under this chapter shall be kept separately from all other juvenile court records.

(d) *Other juvenile records.* Section 48.78 does not apply to records covered by this section.

(e) *Temporary guardian for adult incompetent.* If an adult is believed to be incompetent to consent to the release of records under this section, but no guardian has been appointed for such individual, consent for the release of records may be given by a temporary guardian who is appointed for the purpose of deciding upon the release of records.

(f) *Applicability.* Paragraph (a) and (bm) to (e) apply to all treatment records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

(6) PRIVILEGES. Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients and between attorneys and clients.

(7) CRIMINAL COMMITMENTS. Except as otherwise specifically provided, this section applies to the treatment records of persons who are committed under chs. 971 and 975.

(8) GRIEVANCES. Failure to comply with any provisions of this section may be processed as a grievance under s. 51.61 (5). However, use of the grievance procedure is not required before bringing any civil action or filing a criminal complaint under this section.

(9) ACTIONS FOR VIOLATIONS: DAMAGES; INJUNCTION. (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not more than $1,000 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged. A custodian of records incurs no liability under this paragraph for the release of records in accordance with this section while acting in good faith.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not more than $25,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under this subsection that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of this section or to compel compliance with this section, and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(10) PENALTIES. (a) Whoever does any of the following may be fined not more than $25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under this section under false pretenses.

2. Discloses confidential information under this section with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates sub. (4) (dm) 1., 2. or 3.

(b) Whoever negligently discloses confidential information under this section is subject to a forfeiture of not more than $1,000 for each violation.

(bm) Whoever intentionally discloses confidential information under this section, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(11) DISCIPLINE OF EMPLOYEES. Any employee of the department, a county department under s. 51.42 or 51.437 or a public treatment facility who violates this section or any rule promulgated pursuant to this section may be subject to discharge or suspension without pay.

(12) RULE MAKING. The department shall promulgate rules to implement this section.

History: 1975 c. 430 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29. 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35. 231.237.283.292: 1999 a. 32, 78, 79, 109; 2001 a. 16, 38.

Cross Reference: See also chs. HFS 1 and 92, Wis. adm. code.

By entering a plea of not guilty hy reason of mental disease or defect, a defendant lost the physician–patient privilege hy virtue of s. 905.04 (4) (c) aid lost confidentiality of treatment records under s. 51.30 (4) (b) 4. State v. Taylor, 142 Wis. 2d 36, 417 N.W.2d 192 (Ct. App. 1987).

Sec. 905.04 supersedes this section with respect to all relationships listed in s. 905.04 and is not strictly limited to the physician–patient relationship. State v. S.H. 159 Wis. 2d 730, 465 N.W.2d 238 (Ct. App. 1990).

The release of court records "pursuant to lawful order of the court" under sub. (3) (h) is allowable when access fits within or is comparable to one of the exceptions for treatment records under sub. (4) (h) or when a significant interrelationship exists between the records of the civil commitment proceediiig at issue and a criminal proceeding involving a violent felony pending prior to the civil commitment. Mental condition of Billy Jo W. 182 Wis. 2d 616, 514 N.W.2d 707 (1994).

Information contained in a treatment record but obtained from another source is not subject to the treatment–records privilege under this section, except that all information that identifies a person as a patient is privileged. Daniel A. v. Walter H. 195 Wis. 2d 971, 537 N.W.2d 103 (Ct. App. 1995).

This section provides an exception to the open records law. Nothing in this section or rules adopted under this section suggests that the director is to weigh the harm to the public interest against the benefit to the public in deciding on access to records. State ex rel. Savinski v. Kimble, 221 Wis. 2d 833. 586 N.W.2d 36 (Ct. App. 1998).

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsisteiit terms in s. 51.30. 68 Atty. Gen. 342.

Except for those services for which parental consent is necessary under s. 51.47(2), a physician or health care facility may release outpatient or detoxification services information only with consent of a minor patient, provided the minor is 12 years of age or over. 77 Atty. Gen. 187.

51.35 Transfers and discharges. (1) TRANSFER OF PATIENTS AND RESIDENTS. (a) The department or the county department under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a facility under its supervision or operating under an agreement with it, between treatment facilities or from a facility into the community if such transfcr is consistent with reasonable medical and clinical judgment and consistent with s. 51.22 (5). The transfer shall be made in accordance with par. (e). Terms and conditions which will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. A patient or resident who is committed to the department or a county department under s. 51.42 or 51.437 may be required to take medications and receive trcatmcnt, subject to the right of the patient or resident to refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community support program as a term or condition of a transfer. The patient or resident shall be informed at the time of transfer of the consequences of violating such terms and conditions, including possible transfer back to a facility which imposes a greater restriction on personal freedom of the patient or resident.

(b) In addition to the requirements in par. (a), a transfer of a patient in a mental health institute or center for the developmentally disabled by the department is subject to the approval of the appropriate county department under ss. 51.42 and 51.437 to which the patient was committed or through which the patient was admitted to the facility, if any.

(bm) Notwithstanding par. (b), transfer of a patient under the age of 22 years to a center for the developmentally disabled may be made only to the central center for the developmentally disabled unless the department authorizes the transfer of the patient to the northern or southern center for the developmentally disabled.

(c) The department may, without approval of the county department under s. 51.42 or 51.437 and notwithstanding par. (d) 3., transfer any patient from a treatment facility to another treatment facility when the condition of the patient requires such transfer without delay. The department shall notify the appropriate county department under s. 51.42 or 51.437 that the transfer has been made. Any patient so transferred may be returned to the treatment facility from which the transfer was made, upon orders from the department or the county department under s. 51.42 or 51.437, when such return would be in the best interests of the patient.

(d) 1. The department may, without approval of the appropriate county department under s. 51.42 or 51.437, transfer any patient from a state treatment facility or other inpatient facility to an approved treatment facility which is less restrictive of the patient's personal freedom.

2. Transfer under this subsection may be made only if the transfer is consistent with the requirements of par. (a), and the department finds that the appropriate county department under s. 51.42 or 51.437 is unable to locate an approved treatment facility in the community, or that such county department has acted in an arbitrary or capricious manner to prevent the transfer of the patient out of the state treatment facility or other inpatient facility contrary to medical and clinical judgment.

3. A transfer of a patient, made under authority of this subsection, may be made only after the department has notified the county department under s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection. The patient's guardian, if any, or if a minor his or her parent or person in the place of a parent shall be notified.

(e) 1. Whenever any transfer between different trcatment facilities results in a greater restriction of personal freedom for the patient and whenever the patient is transferred from outpatient to inpatient status, the department or the county department specified under par. (a) shall inform the patient both orally and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have counsel provided at public expense, as provided under s. 967.06 and ch. 977, if the patient is a child or is indigent, and the right to petition a court in the county in which the patient is located or the committing court for a review of the transfer.

2. In addition to the rights and requirements specified in subd. 1., within 24 hours after any transfer which results in a greater restriction of personal freedom for the patient for a period of more than 5 days or any transfcr from outpatient to inpatient status for a period of more than 5 days and if the transfer is due to an alleged violation of a condition of a transfer to less restrictive treatment, the department or the county department specified under par. (a) shall ensure that the patient is provided a written statement of the reasons for the transfer and the facts supporting the transfer and oral and written notice of all of the following:

a. The requirements and rights under subds. 3. to 5.

b. The patient's right to counsel.

c. The patient's right to have counsel provided at public expense, as provided under s. 967.06 and ch. 977, if the patient is a child or is indigent.

d. The rights of the patient's counsel to investigate the facts specified in the written statement of reasons for the transfer, to consult with the patient prior to the patient's waiving a hearing under subd. 3., to represent the patient at all proceedings on issues relating to the transfer, and to take any legal steps necessary to challenge the transfer.

3. Within 10 days after the transfer specified in subd. 2., a hearing shall be held on whether the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient, and on

whether the patient violated a condition of a transfer to less restrictive treatment that resulted in a transfer under subd. 2. The hearing shall be held before a hearing officer designated by the director of the facility to which the patient has been transferred. The hearing officer may not be a person who has had direct responsibility for making treatment decisions for or providing treatment to the subject individual. The patient may appear at the hearing, either personally or by counsel, and may present and cross–examine witnesses and present documentary evidence. The hearing may be waived by the patient only after consultation with counsel. Any waiver made shall be in writing and witnessed by the patient's counsel.

4. The department or the county department seeking the transfer has the burden of proving, by a preponderance of the evidence, that the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient, and that the patient violated a condition of a transfer to less restrictive treatment that resulted in a transfer under subd. 2. Hearsay evidence is admissible if the hearing officer makes a determination that the evidence is reliable. Hearsay evidence may not be the sole basis for the decision of the hearing officer.

5. The hearing officer shall, as soon as possible after the hearing, issue a written statement setting forth his or her decision, the reasons for the decision and the facts upon which the decision is based. Within 30 days after the date on which the statement is issued, the patient or the department or the county department seeking the transfer may appeal the decision to a court in the county in which the facility to which the patient has been transferred is located or to the committing conrt.

6. This paragraph does not apply to a return to a more restrictive facility if the return occurs within 7 days after a temporary transfer from that facility and the return was part of a previously established plan of which the patient was notified at the time of the temporary transfer. This paragraph does not apply to a return of an inmate to a state or county treatment facility under s. 51.20 (13) (cm).

(f) The transfer of a patient or resident to a medical facility for nonpsychiatric medical services does not constitute a transfer within the meaning of this chapter and does not require the procedural protections for return to the original facility which are required by this section for other transfers.

(2) TRANSFER OF CERTAIN DEVELOPMENTALLY DISABLED PATIENTS. The department may authorize a transfer of a patient from a center for the developmentally disabled to a state treatment facility if the patient is mentally ill and exhibits conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. to himself or herself or to others in the treatment facility where he or she is present. The department shall file a statement of emergency detention with the committing court within 24 hours after receiving the person for emergency detention. The statement shall conform to the requirements specified in **s.** 51.15 (4).

(3) TRANSFER OF CERTAIN JUVENILES FROM SECURED JUVENILE FACILITIES. (a) **A** licensed psychologist of a secured correctional facility, a secured child caring institution, or a secured group home, or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the secured correctional facility, secured child caring institution, or secured group home is, in his or her opinion, in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, and who has obtained voluntary consent to make a transfer for treatment, shall make a report, in writing, to the superintendent of the secured correctional facility, secured child caring institution, or secured group home, stating the nahire and basis of the belief and verifying the consent. In the case of a minor age 14 or older who is in need of services for developmental disability or who is in need of psychiatric services, the minor and the minor's parent or guardian shall consent unless the minor is admitted under **s.** 51.13 (1) (c) 1. In the case of a minor age 14 or older who is in necd of services for alcoholism or drug dependency or a minor under the age of 14 who is in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, only the minor's parent or guardian need consent unless the minor is admitted under **s.** 51.13 (1) (c). The superintendent shall inform, orally and in writing, the minor and the minor's parent or guardian, that transfer is being considered and shall inform them of the basis for the request and their rights as provided in s. 51.13 (3). If the department of corrections, upon review of a request for transfer, determines that transfer is appropriate, that department shall immediately notify the department of health and family services and, if the department of health and family services consents, the department of corrections may immediately transfer the individual. The department of health and family services shall file a petition under **s.** 51.13 (4) (a) in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county where the treatment facility is located.

(b) The court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether the transfer of the minor to an inpatient facility is appropriate and consistent with the needs of the minor and, if the minor is 14 years of age or older and is being transferred for the purpose of receiving services for developmental disability or psychiatric services, whether the transfer is voluntary on the part of the minor. If the court is unable to make those determinations based on the petition and accompanying documents, the court may order additional information to be produced as necessary to make those determinations within 14 days after admission, or the court may hold a hearing within 14 days after admission. If a notation of the minor's unwillingness appears on the face of the petition, or if a hearing has been requested by the minor or by the minor's counsel, guardian ad litem, parent, or guardian, the court shall hold a hearing and appoint counsel or a guardian ad litem for the minor as provided in s. 51.13 (4) (d). At the conclusion of the hearing, the court shall approve or disapprove the request for transfer. If the minor is under the continuing jurisdiction of the court of another county, the court may order the case transferred together with all appropriate records to that court.

(c) **A** licensed psychologist of a secured correctional facility, a secured child caring institution, or a secured group home, or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the secured correctional facility, secured child caring institution, or secured group home, in his or her opinion, is mentally ill, drug dependent, or developmentally disabled and is dangerous as described in s. 51.20 (1) (a) 2., or is an alcoholic and is dangerous as described in s. 51.45 (13) (a) 1. and 2., shall file a written report with the superintendent of the secured correctional facility, secured child caring institution, or secured group home, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer **is** appropriate, he or she shall file a petition according to s. 51.20 or 51.45 in the court assigned to exercise jurisdiction under ch. 48 of the county where the secured correctional facility, secured child caring institution, or secured group home is located. The court shall hold a hearing according to procedures provided in **s.** 51.20 or 51.45 (13).

(d) Within a reasonable time before the expiration of the confinement of an individual who is transferred under par. (a), if he or she is still in the treatment facility, the director shall make an application under **s.** 51.20 or 51.45 (13) to the court of the county in which the hospital is located for an inquiry into the individual's mental and physical condition, and thereafter the proceedings shall be as in other applications under such provisions. Notwithstanding ss. 51.20 (1) (b) and 51.45 (13) (a), the application of the director of the treatment facility alone is sufficient.

(e) The department of corrections may authorize emergency transfer of an individual from a secured correctional facility: a secured child caring institution, or a secured group home to a state treatment facility if there is cause to believe that the individual is

mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described under s. 51.20 (1) (a) 2. a., b., c. or d. to the individual or to others, is mentally ill, is dangerous and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The custodian of the sending secured correctional facility, secured child caring institution or secured group home shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health and family services shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the secured correctional facility, secured child caring institution or secured group home from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no individual may be released without the approval of the court which directed confinement in the secured correctional facility, secured child caring institution or secured group home.

(f) A copy of the patient's rights established in s. 51.61 shall be given and explained to the minor and his or her parent or guardian at the time of admission by the director of the facility or such person's designee.

(g) A minor 14 years of age or older who is transferred to a treatment facility under par. (a) for the purpose of receiving services for developmental disability or psychiatric services may request in writing a return to the secured correctional facility, secured child caring institution, or secured group home. In the case of a minor 14 years of age or older who is transferred to a treatment facility under par. (a) for the purpose of receiving services for alcoholism or drug dependency or a minor under 14 years of age, who is transferred to a treatment facility under par. (a) for the purpose of receiving services for developmental disability. alcoholism, or drug dependency, or psychiatric services, the parent or guardian may make the request. Upon receipt of a request for return from a minor 14 years of age or older, the director shall immcdiatcly notify the minor's parent or guardian. The minor shall be rehtrned to the secured correctional facility, secured child caring institution, or secured group home within 48 hours after submission of the request unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement.

(4) DISCHARGE. (a) The county department under s. 51.42 or 51.437 shall grant a discharge from an order of commitment when it determines that the patient no longer meets the standard for recommitment under s. 51.20 (13) (g). The county department shall grant a discharge to a patient who is voluntarily admitted to an inpatient facility if the treatment director determines that treatment is no longer necessary or if the individual requests such discharge. Discharge or retention of a patient who is voluntarily admitted is subject to the procedures prescribed in ss. 51.10 (5) and 51.13 (7).

(b) The department shall grant a discharge from commitment or from voluntary admission for patients committed or voluntarily admitted to a facility under control of the department. The standards applied by the department in granting a discharge shall be the same as those provided in par. (a). The department may not discharge from a commitment an individual who has been committed to a county department under s. 51.42 or 51.437 without first obtaining approval of that county department. The department may discharge a voluntarily admitted patient if the appropriate county department is notified. Transfers of patients may be made by the department in accordance with sub. (1).

(c) The director of an inpatient facility may grant a discharge or may terminate services to any patient who is voluntarily admitted under s. 51.10 or 51.13 when, on the advice of the treatment staff, such discharge or termination is in the best interests of the patient.

(d) The director of an inpatient facility may grant a discharge or may terminate services to any patient voluntarily admitted under s. 51.10 or 51.13 when such patient requests a discharge. Such discharge shall conform to the requirements of s. 51.10 (5) (c) or 51.13 (7).

(e) A discharge may be issued to a patient who participates in outpatient, aftercare, or follow–up treatment programs. The discharge may permit the patient to receive necessary medication, outpatient treatment, consultation and guidance from the issuing facility at the request of the patient. Such discharge is not subject to withdrawal by the issuing agency.

(f) Notice of discharge shall be filed with the committing court, if any, by the department or the board which granted the discharge. After such discharge, if it becomes necessary for the individual who is discharged to have further care and treatment, and such individual cannot be voluntarily admitted, a new commitment must be obtained, following the procedure for the original commitment.

(4m) TRANSFER OR DISCHARGE OF PERSONS WITH CHRONIC MENTAL ILLNESS. The department or county department under s. 51.42 or any person authorized to discharge or transfer patients under this section shall, prior to the discharge of a patient with chronic mental illness from an inpatient facility, or prior to the transfer of a patient with chronic mental illness from inpatient to outpatient status, with the patient's permission if the patient is a voluntary patient, do all of the following:

(a) Refer the patient to the county department under s. 51.42 which is responsible for the patient's care for referral to a community support program in the county to which the patient will be discharged or transferred for evaluation of the need for and feasibility of the provision of community–based services and of the need for and feasibility of the provision of aftercare services.

(b) Assist the patient in applying for any public assistance for which he or she may qualify.

(5) RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES. The department and any person, director or board authorized to discharge or transfer patients under this section shall ensure that a proper residential living arrangement and the necessary transitionary services are available and provided for the patient being discharged or transferred. Under this subsection, a proper residential living arrangement may not include a shelter facility, as defined under s. 16.352 (1) (d), unless the discharge or transfer to the shelter facility is made on an emergency basis for a period not to exceed 10 days.

(6) VETERANS. (a) When the department has notice that any person other than a prisoner is entitled to receive care and treatment in a U.S. department of veterans affairs facility, the person may petition the department of health and family services for a transfer to such facility, and that department may procure admission to such facility in accordance with s. 45.30.

(b) If an individual who is committed under s. 51.37 is entitled to receive care and treatment in a U.S. department of veterans affairs facility, the person may petition the department of health and family services for a transfer to such facility. If the department declines to grant the request, it shall give the person a written reply, stating the reasons for its position. The decision of the department is subject to review by the court which passed sentence or ordered commitment of the person.

(7) GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any state treatment facility, the department shall review the possible need of a developmentally disabled, aged infirm or person with other like incapacities for protective services or placement under ch. 55 after discharge, including the ncccssity for appointment of a guardian or limited guardian. The dcpartmcnt shall petition for limited or full guardianship. or for

protective services or placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

(8) HOME VISITS AND LEAVES AUTHORIZED. (a) The department or the county department under s. 51.42 or 51.437 may grant to a patient or resident who is committed to it under this chapter, or who is admitted or transferred under this chapter to a facility under its supervision or operating under a contractual agreement with it, a home visit for up to 15 days, or a leave for employment or education purposes in which the patient or resident is not absent from the facility for more than 15 days.

(b) If a patient or resident who is detained under s. 51.15, committed under s. 51.20 or transferred under sub. (3) does not return to the treatment facility by the time designated in the granting of the home visit or leave, the director of the treatment facility may request the sheriff of the county in which the individual is found to return the individual to the facility. The sheriff shall act in accordance with s. 51.39.

(c) This subsection does not apply to persons transferred from a prison or jail under s. 51.37 *(5)*.

(d) A home visit or leave does not constitute a transfer under this chapter, and does not require a hearing under this section or s. 51.61.

History: *1975 c. 430 ss.* 18.81: *1977 c. 26, 29, 428; 1979 c.* 110s. *60 (1)*; 1981 c. 74 s. **2;** 1981 **c.** 314 s. 144; 1983a. 27,441,474; 1985a. 29. 176,332; 1987a. 366, 403: 1989a. 31.56, 107; 1991a. 39; 1993a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9: 2001 a. 16 ss. 1967f to 1967j, 4034zi.

NOTE: 1987 Wis. Act 366, which amended this section, contains notes by the Legislative Council following many of the statutes affected.

51.37 Criminal commitments; mental health institutes. (1) All commitments under s. 975.01, 1977 stats., and s. 975.02, 1977 stats., and tinder ss. 971.14 (5), 971.17 and 975.06 shall be to the department.

(3) The Mendota and Winnebago mental health institutes may be used for the custody, care and treatment of persons committed or transferred thereto pursuant to this section and chs. 971 and 975.

(4) The department may, with the approval of the committing court and the county department under s. 51.42 or 51.437, and subject to s. 51.35, transfer to the care and custody of a county department under s. 51.42 or 51.437 any person in an institution of the department committed under s. 971.14 or 971.17, if in its opinion, the mental condition of the person is such that further care is required and can be properly provided under the direction of the county department under s. 51.42 or 51.437.

(5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department of corrections reports in writing to the officer in charge of a jail or institution that any prisoner is, in his or her opinion, mentally ill, drug dependent. or developmentally disabled and is appropriate for treatment as described in s. 51.20 (1), or is an alcoholic and is dangerous as described in s. 51.45 (13) (a) I. and 2.; or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department of corrections which may transfer the prisoner if a voluntary application is made and the department of health and family services consents. If voluntary application is not made, the department of corrections may file a petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a prisoner in an institution designated under sub. (3) or s. 51.37 (2), 1983 stats., shall be included as part of the individual's sentence.

(b) The department of corrections may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. a., b., c. or d. of physical hann to himself or herself or to others, or is mentally ill and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) I. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health and family services shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. The statement or petition shall conform to s. 51.15 (4) or *(5)* or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

(c) No state treatment facility may accept for admission an individual who is being transferred from a county jail under par. (a) or (b) without the approval of the county department under s. 51.42 or 51.437 of the county in which the jail is located. No state treatment facility may retain such an individual beyond 72 hours without the approval of the county department under s. 51.42 or 51.437 of the county where the transferred individual has legal residence.

(6) After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1).

(7) Section 51.20 (18) applies to witness fees, attorney fees and other court fees incurred under this section.

(8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or inmate who is found to be mentally ill or drug dependent except that the petition shall be made to the court that made the finding or, if the prisoner or inmate is detained by transfer, to the circuit court of the county in which he or she is detained. If upon rehearing it is found that the standards for recommitment under s. 51.20 (13) (g) no longer apply to the prisoner or inmate or that he or she is not in need of psychiatric or psychological treatment, the prisoner or inmate shall be returned to the prison or county jail or house of correction unless it is past his or her release date as determined under s. 302.11 or 302.113, whichever is applicable, in which case he or she shall be discharged.

(b) If the condition of any prisoner or inmate committed or transferred under this section requires psychiatric or psychological treatment after his or her date of release as determined under s. 302.11 or 302.113, whichever is applicable, the director of the state treatment facility shall, within a reasonable time before the release date of the prisoner or inmate, make a written application to the court that committed the prisoner or inmate under sub. (5) (a). Thereupon: the proceeding shall be upon application made under s. 51.20, but no physician or psychologist who is connected with a state prison, Winnebago Mental Health Institute, Mendota Mental Health Institute, or any county jail or house of correction may be appointed as an examiner. If the court does not commit the prisoner or inmate, it may dismiss the application and order the prisoner or inmate returned to the institution from which he or she was transferred until the release date of the prisoner or inmate. If the court commits the prisoner or inmate for the period commencing upon his or her release date, the commitment shall be to the care and custody of the county department under s. 51.42 or 51.437.

(9) If in the judgment of the director of Mendota Mental Health Institute, Winnebago Mental Health Institute or the Milwaukee County Mental Health Complex, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department of health and family services, the committing court and the district attorney of the county in which

the court is located his or her reasons for the judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department of health and family services, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department of health and family services. Before a person is conditionally transferred or discharged under supervision under this subsection, the department of health and family services shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department of health and family services a written statement waiving the right to be notified. The department of health and family services may contract with the department of corrections for the supervision of persons who are transferred or discharged under this subsection.

(10) (a) In this subsection:

1. "Crime" has the meaning designated in **s.** 949.01 (1).

2. "Extended home visit or leave" means a home visit or leave lasting 24 hours or longer.

3. "Member of the family" means spouse, child, sibling, parent or legal guardian.

4. "Victim" means a person against whom a crime has been committed.

(am) The director of a state treatment facility may grant to any patient admitted to the facility as a result of a commitment under ch. 971 or 975, a home visit for up to 15 days, or a leave for employment or education purposes in which the patient is not absent from the facility for more than 15 days.

(b) Such a home visit or leave may be granted by the department at its discretion when it is believed to be in the best therapeutic intcrcsts of the patient and it is reasonably believed not to present a substantial risk of harm to the community.

(c) Any patient who is granted a home visit or leave under this subsection shall be restricted to the confines of this state unless otherwise specifically permitted. The patient may, in addition, be restricted to a particular geographic area. Other conditions appropriate to the person's treatment may also he imposed upon the home visit or leave.

(d) If such a patient does not return to the treatment facility by the time designated in the granting of the home visit or leave, or if the patient is believed to have violated other conditions of the home visit or leave, the director of the treatrncnt facility may request the sheriff of the county in which the patient is found to return the patient to the facility. The sheriff shall act in accordance with **s.** 51.39.

(dg) If the department grants a patient an extended home visit or leave under this subsection, the dcpartmcnt shall do all of the following in accordance with par. (dm):

1. Notify the office of the judge who committed the patient.

2. Notify the office of the district attorney who participated in the commitment proceedings.

3. Make a reasonable attempt to notify the victim of the crime committed by the patient or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian, after the submission of a card under par. (dx) requesting notification.

(dm) 1. The notice under par. (dg) shall inform the offices and person under par. (dg) 1. to 3. of the patient's name and of the date the patient will begin the home visit or leave. The department shall provide notice under this paragraph for a patient's first extended home visit or leave and, upon request, for subsequent extended home visits or leaves.

2. The department shall send the notice, postmarked at least 7 days before the patient begins the extended home visit or leave, to the last–known address of the offices and person under **par.** (dg) 1. to 3.

3. If the notice is for a first extended home visit or leave, the notice shall inform the offices and person under par. (dg) 1. to 3. that notification of subsequent extended home visits or leaves will be provided only upon request.

(dx) The department shall design and prepare cards for persons specified in par. (dg) 3. to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the applicable patient and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par. (dg) 3. These persons may send completed cards to the department. All departmental records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under **s.** 19.35 (1).

(e) The director of the facility in which the patient under par. (am) is detained or committed shall notify the appropriate correctional officers of the department of corrections of the intention to grant a home visit or leave under this subsection at least 20 days prior to the departure of the patient from the facility.

(f) This section docs not apply to persons transferred from a prison or jail under sub. (5).

(g) **A** home visit or leave does not constitute a transfer under this chapter and return to the facility does not necessitate a hearing under s. 51.35 or 51.61.

(11) When an individual who is in the custody of or under the supervision of a correctional officer of the department of corrections is transferred, discharged or is on unauthorized absence from a treatment facility, the probation, extended supervision and parole agent or other individual within the department of corrections who is responsible for that individual's supervision shall be notified as soon as possible by the director of the treatment facility.

History: 1975 c. 430; 1977 c. 418 ss. 360 to 362.929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. **292;** 1997 a. 181, 283; 2001 a. 16 s. 4034zj; 2001 a. 103.

Cross Reference: See also ch. HFS 98, Wis. adm. code.

Persons confined in a state hospital under ss. 51.20, 51.37, 971.14, 971.17 and 975.06 are being subjected to punishment within the meaning of the cruel and unusual punishment clause. Flakes v. Percy, 511 F. Supp. 1325 (1981).

51.375 Honesty testing of sex offenders. (1) In this section:

(a) "Community placement" means conditional transfer into the community under **s.** 51.35 (1), conditional release under s. 971.17, parole from a commitment for specialized treatment under ch. 975 or conditional release undcr ch. 980.

(b) "Lie detector" has the meaning given in **s.** 111.37 (1) (b).

(c) "Polygraph" has the meaning given in s. 111.37 (1) (c).

(d) "Sex offender" means a person committed to the department who meets any of the criteria specified in s. 301.45 (1g).

(2) (a) The department may require. as a condition of a community placement, that a **sex** offender submit to a lie detector test when directed to do so by the department.

(b) The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. **A** patient may refuse to submit to a **lie** detector test under this paragraph. This refusal does not constitute a general refusal to participate in treatment. The results of a lie detector test under this paragraph may be used only in the care, treatment, or assessment of the subject or in programming for the subject. The results of a test may be disclosed only to persons employed at the facility at which the subject is placed who need to know the results for **purposes** related to care, treatment, or assessment of the patient, the committing court, the patient's attorney, or the attorney representing the state in a proceeding under ch. 980.

(3) The department shall promulgate rules establishing a lie detector test program for sex offenders who are in a community placement. The rules shall provide for assessment of fees upon persons committed to the department to partially offset the costs of the program.

History: 1995 a. 440; 1999 a. 89; 2001 a. 16.

Cross Reference: See also ch. HFS 98, Wis. adm. code.

51.38 Nonresident patients on unauthorized absence. The circuit court may order the detention of any nonresident individual who is on unauthorized absence from any institution of another state for the treatment of mental illness, developmental disabilities, alcoholism or drug abuse. Detention shall be for the period necessary to complete the deportation of that individual.

History: 1975 c. 430; 1977 c. 428: 1977 c. 449 s. 497.

51.39 Resident patients on unauthorized absence. If any patient who is admitted under s. 51.13, 51.15, 51.20, 51.45 (11) (b), (12) or (13) or 55.06 or ch. 971,975 or 980 or transferred under s. 51.35 (3) or 51.37 is on unauthorized absence from a treatment facility, the sheriff or any other law enforcement agency in the county in which the patient is found or in which it is believed the patient may be present, upon the request of the director, shall take charge of and return the patient to the facility. The costs incident to the return shall be paid out of the facility's operating funds and be charged back to the patient's county of residence.

History: 1975 c. 430; 1977 c. 428; 1979 c. 336; 1993 a. 479.

51.40 Residence of developmentally disabled or chronically mentally ill adults. (1) DEFINITIONS. In this section:

(a) "Agency of a county department" means a public or private organization with which a county department contracts for provision of services under ch. 46, 51 or 55.

(b) "Arrange or make placement" means perform any action beyond providing basic information concerning the availability of services, facilities or programs in a county to an individual or the individual's family.

(c) "Capable of indicating intent" means able to express by words or other means an informed choice of a place to live.

(d) "County department" means a county department under s. 46.23, 51.42 or 51.437.

(e) "County of responsibility" means the county responsible for funding the provision of scrviccs under ch. 46 or 55 to an individual.

(f) ''Guardian" means a guardian of the person appointed by a court under ch. 880.

(g) "Incapable of indicating intent" means one of the following:

1. The status of an individual who has had a guardian appointed under ch. 880, unless the court made a specific finding under s. 880.33 (3) that the individual is competent to make an informed choice of a place to live.

2. The status of an individual for whom there is substantial evidence, based on documentation from a licensed physician or psychologist who has personally examined the individual and who has expertise Concerning the type of mental disability evidenced by the individual, that the individual is incapable of indicating intcnt.

(h) "Nursing home" has the meaning specified under s. 50.01 (3), except that "nursing home" does not include a facility that is operated directly by the department.

(i) "Parent" has the meaning specified under s. 48.02 (13).

(j) "State facility" means a state mental health institute, center for the developmentally disabled, prison as specified in s. 302.01 or a facility that is operated directly by the department of health and family services or the department of corrections.

(2) DETERMINATION OF RESIDENCE. For purposes of determining responsibility for funding the provision of services under chs. 46, 51 and 55, the county of residence of individuals aged 18 or older with developmental disability or chronic mental illness in state facilities or nursing homes shall be determined as follows:

(a) *Directed placement.* 1. 'Commitment or protection placement.' If an individual is under a court order of commitment under this chapter or protective placement under s. 55.06, the individual remains a resident of the county in which he or she has residence at the time the commitment or protective placement is made. If the court makes no specific finding of a county of residence, the individual is a resident of the county in which the court is located.

2. 'Placement by a county.' Except for the provision of emergency services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) or 55.06 (11), if a county department or an agency of a county department arranges or makes placement of the individual into a state facility or nursing home, the individual is a resident of the county of that county department. Any agency of the county department is deemed to be acting on behalf of the county department in arranging or making placement.

(b) ***Other** admissions.* If par. (a) does not apply, one of the following shall apply:

1. 'Individuals in state facilities.' An individual who is in a state facility is a resident of the county in which he or she was a resident at the time the admission to the state facility was made. This subdivision may not be applied to change residence from a county, other than the county in which the facility is located, which has accepted responsibility for or provided services to the individual prior to August 1, 1987.

2. 'Individuals in nursing homes.' An individual in a nursing home who was admitted to the nursing home on or after August 1, 1987, is a resident of the county which approved the admission under s. 50.04 (2r). An individual in a nursing home on August 1, 1987, is presumed to be a resident of the county in which the individual is physically present unless another county accepts the individual as a resident. The presumption of residence may be overcome by substantial evidence which clearly establishes residence in another county in one of the following ways:

a. The individual had an established residence in another county prior to entering the nursing home; the individual or the individual's guardian, if any, indicates an intent that the individual will return to that county when the purpose of entering the nursing home has been accomplished or when needed care and services can be obtained in the other county; and the individual, when capable of indicating intent, or a guardian for the individual, has made no clearly documented expression to a court or county department of an intent to establish residence elsewhere since leaving that county.

b. The individual is incapable of indicating intent as determined by the county department, has no guardian, ordinarily resides in another county, and is expected to return to that county within one year.

c. Another county has accepted responsibility for or provided services to the individual prior to August 1, 1987.

d. The individual is incapable of indicating intent; the individual was living in another county outside of a nursing home or state facility on December 1, 1982, or under circumstances which established residence in that county after December 1, 1982; and that county was the last county in which the individual had residence while living outside of a nursing home or state facility.

(f) *Exception; county of guardian's residence.* Notwithstanding pars. (a) and (b), an individual in a nursing home or state facility who is incapable of indicating intent and whose parent or sibling serves as his or her guardian is a resident of the guardian's county of residence if the state facility or nursing home is located in that county or if the guardian states in writing that the individual is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in that county.

(g) *Determination of county of responsibility* 1. An individual, an interested person on behalf of the individual, or any county

may request that the department make a determination of the county of responsibility of the individual. Within 10 days after receiving the request, the department shall provide written notice to the individual, to the individual's guardian, if any, and to all potentially responsible counties that a determination of county of responsibility shall be made and that written information and comments may be submitted within 30 days after the date on which the notice is sent.

2. The department shall review information submitted under subd. 1. and make such investigation as it deems proper. Within 30 days after the end of the period for submitting information, the department shall make a decision as to residence, and send a copy of the decision to the individual and to all involved counties. The decision may be appealed under **s.** 227.44 by the individual or the county determined to be responsible.

3. Pending a determination under subd. 2., a county department which has been providing services to the individual shall continue to provide services if necessary to meet the individual's needs. If no county department is currently providing services, the county in which the client is physically present shall provide necessary services pending the determination.

4. **A** determination under subd. 2. may provide for a period of transitional services to assure continuity of services by specifying a date until which the county department which has been providing services shall continue to do so.

5. The decision of the department under subd. 2. is binding on the individual and on any county which received notice of the proceeding. Except as provided in the determination, the county determined to be the county of responsibility shall act as the county of responsibility immediately after receiving notice of the determination, and during the pendency of any appeal of the determination that is brought under ch. 227.

History: 1987 a. 27; 1989 a. 31,359; 1995 a. 27 s. 9126 (19).

The residence of an adult who was protectively placed as a minor **is** discussed. Waukesha County v. B.D. 163 Wis. 2d 779.472 Wis. 2d 563 (Ct. App. 1991).

A community-based residential facility is neither a nursing home nor a state facility. Sub. (2) **is** limited to individuals living in nursing homes or state facilities. Juneau County v. Sauk County, 217 Wis. 2d 705. 580 N.W.2d 694 (Ct. App. 1998).

51.42 Community mental health, developmental disabilities, alcoholism and drug abuse services.. (1) PROGRAM. (a) *Purpose and intent.* **All** of the following are the purposes and intent of this section:

1. To enable and encourage counties to develop a comprehensive range of services offering continuity of care.

2. To utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including but not limited to mental illness, developmental disabilities, alcoholism and drug abuse.

3. To provide for the integration of administration of those services and facilities organized under this section through the establishment of a county department of community programs.

4. To authorize state consultative services. reviews and establishment of standards and grants-in-aid for such program of services and facilities.

(b) *County liability.* The county board of supervisors has the primary responsibility for the well-being, treatment and care of the mentally ill, developmentally disabled, alcoholic and other drug dependent citizens residing within its county and for ensuring that those individuals in need of such emergency services found within its county receive immediate emergency services. This primary responsibility is limited to the programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds. County liability for care and services purchased through or provided by a county department of community programs established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency services" includes those services provided under the authority of **s.** 51.15, 51.45 (11) (a) or (b) or (12), 55.05 (4) or 55.06 (11) (a) for not more than 72 hours. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party, or prevents reimbursement by the department of health and family services for the actual cost of all care and services from the appropriation under **s.** 20.435 (7) (da), as provided in **s.** 51.22 (3).

(2) DEFINITION. In this section, "program" means community services and facilities for the prevention or amelioration of mental disabilities, including but not limited to mental illness, developmental disabilities, alcoholism and drug abuse.

(3) COUNTY DEPARTMENT OF COMMUNITY PROGRAMS. (a) *Creation.* Except as provided under s. 46.23 (3) (b), the county board of supervisors of any county, or the county boards of supervisors of 2 or more contiguous counties, shall establish a county department of community programs on a single-county or multicounty basis to administer a community mental health, developmental disabilities, alcoholism and drug abuse program, make appropriations to operate the program and authorize the county department of community programs to apply for grants-in-aid under s. 51.423. The county department of community programs shall consist of a county community programs board, a county community programs director and necessary personnel.

(ar) *Dirties.* **A** county department of community programs shall do all of the following:

1. Enter into contracts to render services to or secure services from other agencies or resources including out-of-state agencies or resources. Notwithstanding **ss.** 59.42 (1) and (2) (b) and 978.05, any multicounty department of community programs may contract for professional legal services that are necessary to carry out the duties of the multicounty department of community programs if the corporation counsel of each county of the multicounty department of community programs has notified the multicounty department of community programs that he or she is unable to provide those services in a timely manner.

2. Enter into contracts for the use of any facility as an approved public treatment facility under s. 51.45 for the treatment of alcoholics if the county department of community programs deems it to be an effective and economical course to follow.

3. Plan for and establish a community developmental disabilities program to deliver the services required under **s.** 51.437 if, under s. 51.437 (4g) (b), the county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs transfer the powers and duties of the county department under s. 51.437 to the county department of community programs. The county board of supervisors in a county with a single-county department of community programs and the county boards of supervisors in counties with a multicounty department of community programs may designate the county department of community programs to which these powers and duties have been transferred as the administrative agency of the long-term support community options program under s. 46.27 (3) (b) 1. and 5. and the community integration programs under ss. 46.275, 46.277 and 46.278.

4. Within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the program needs of persons suffering from mental disabilities, including mental illness, developmental disabilities, alcoholism or drug abuse, by offering the following services:

a. Collaborative and cooperative services with public health and other groups for programs of prevention.

b. Comprehensive diagnostic and evaluation services, including assessment as specified under ss. 343.30 (Iq) and 343.305 (10) and assessments under ss. 48.295 (1) and 938.295 (1).

c. Inpatient and outpatient care and treatment, residential facilities, partial hospitalization, emergency care and supportive transitional services.

d. Related research and staff in–service training, including periodic training on emergency detention procedures under s. 51.15 and emergency protective placement procedures under s. 55.06 (11), for individuals within the jurisdiction of the county department of community programs who are authorized to take persons into custody under ss. 51.15 and 55.06 (11). In developing in–service training on emergency detention and emergency protective placement procedures, the county department of community programs shall consult the county department of developmental disabilities services under **s.** 51.437 in counties where these departments are separate.

e. Continuous planning, development and evaluation of programs and services for all population groups.

4m. If state, federal and county funding for alcohol and other drug abuse treatment services provided under subd. 4. are insufficient to meet the needs of all eligible individuals, ensure that first priority for services is given to pregnant women who suffer from alcoholism or alcohol abuse or are drug dependent.

5. Prepare a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abusers and those with other psychiatric disabilities for citizens residing within the jurisdiction of the county department of community programs and for persons in need of emergency services found within the jurisdiction of the county department of community programs. The plan shall also include the establishment of long–range goals and intermediate–range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care. The plan shall state how the needs of homeless persons and adults with serious and persistent mental illness, children with serious emotional disturbances and minorities will be met by the county department of community programs. The county department of community programs shall submit the plan to the department for review under sub. (7) (a) 9. and **s.** 51.02 (1) (f) in accordance with the schedule and deadlines established under sub. (7) (a) 9.

6. Under the supervision of the county community programs director, using qualified personnel with training or experience, or both, in mental health, developmental disabilities, or in alcoholism and drug abuse, be responsible for the planning and implementation of programs relating to mental health, developmental disabilities, alcoholism or drug abuse. A single coordinator may be responsible for alcoholism, drug abuse, mental health and developmental disabilities programs.

7. Acknowledge receipt of the notification received under **s.** 115.812 (2).

8. By September 30, submit for inclusion as part of the proposed county budget to the county executive or county administrator or, in those counties without a county executive or county administrator, directly to the county board of supervisors in a county with a single–county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs a proposed budget for the succeeding calendar year covering services, including active treatment community mental health center services, based on the plan required under subd. 5. The final budget shall be submitted to the department of health and family services.

9. Develop the cost of all services which it purchases based on the standards and requirements of **s.** 46.036.

11. Annually report to the department of health and family services regarding the use of any contract entered into under **s.** 51.87

13. Except in an emergency, review and approve or disapprove all admissions to nursing homes of mentally ill persons under age 65 who are residents of the county.

14. If the county board of supervisors establishes an integrated service program for children with severe disabilities under **s.** 59.53 (7), participate in and may administer an integrated service program for children with severe disabilities under **s.** 59.53 (7), including entering into any written interagency agreements or contracts.

15. Submit to the department in a timely fashion, as specified by the department, any reports necessary to comply with the requirements under 42 USC 300x–52.

17. If authorized under s. 46.283 (1) (a) 1., apply to the department of health and family services to operate a resource center under **s.** 46.283 and, if the department contracts with the county under **s.** 46.283 (2), operate the resource center.

18. If authorized under s. 46.284 (1) (a) 1., apply to the department of health and family services to operate a care management organization under s. 46.284 and, if the department contracts with the county under **s.** 46.284 (2), operate the care management organization and, if appropriate, place funds in a risk reserve.

(as) *Care in other facilities.* 1. A county department of community programs shall authorize all care of any patient in a state, local or private facility under a contractual agreement between the county department of community programs and the facility, unless the county department of community programs governs the facility. The need for inpatient care shall be determined by the program director or designee in consultation with and upon the recommendation of a licensed physician trained in psychiatry and employed by the county department of community programs or its contract agency. In cases of emergency, a facility under contract with any county department of community programs shall charge the county department of community programs having jurisdiction in the county where the patient is found. The county department of community programs shall reimburse the facility for the actual cost of all authorized care and services less applicable collections under **s.** 46.036, unless the department of health and family services determines that a charge is administratively infeasible, or unless the department of health and family services, after individual review, determines that the charge is not attributable to the cost of basic care and services. Except as provided in subd. Im., a county department of community programs may not reimburse any state institution or receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under **s.** 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a). commitments under s. 975.01, 1977 stats., or **s.** 975.02, 1977 stats., or **s.** 971.14, 971.17 or 975.06 or admissions under **s.** 975.17, 1977 stats., or children placed in the guardianship of the department of health and family services under s. 48.427 or 48.43 or under the supervision of the department of corrections under **s.** 938.183 or 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client.

1m. A county department of community programs shall reimburse a mental health institute at the institute's daily rate for custody of any person who is ordered by a court located in that county to be examined at the mental health institute under **s.** 971.14 (2) for all days that the person remains in custody at the mental health institute, beginning 48 hours, not including Saturdays, Sundays, and legal holidays, after the sheriff and county department receive notice under **s.** 971.14 (2) (d) that the examination has been completed.

2. If a mental health institute has provided a county department of community programs with service. the department of health and family services shall regularly bill the county department of community programs, except as provided under subd. 2m. If collections for care exceed current billings, the difference shall be remitted to the county department of community programs

through the appropriation under **s.** 20.435 (2) (gk). For care provided on and after February 1, 1979, the department of health and family services shall adjust collections from medical assistance to compensate for differences between specific rate scales for care charged to the county department of community programs and the average daily medical assistance reimbursement rate. Payment shall be due from the county department of community programs within 60 days of the billing date subject to provisions of the contract. If any payment has not been received within 60 days, the department of health and family services shall deduct all or part of the amount from any payment due from the department of health and family services to the county department of community programs.

2m. The department of health and family services may bill the county department of community programs under subd. 2. for inpatient services provided on or after October 1, 1987, by a mental health institute for individuals under 21 years of age or for individuals under 22 years of age who are receiving the services immediately prior to reaching age 21, only if the person lacks full means of payment, including payment from medical assistance and other sources.

3. Care, services and supplies provided after December 31, 1973, to any person who, on December 31, 1973, was in or under the supervision of a mental health institute, or was receiving mental health services in a facility authorized by **s.** 51.08 or 51.09, but was not admitted to a mental health institute by the department of health and family services, shall be charged to the county department of community programs which was responsible for such care and services at the place where the patient resided when admitted to the institution. The department of health and family services may bill county departments of community programs for care provided at the mental health institutes at rates which the department of health and family services sets on a flexible basis, except that this flexible rate structure shall cover the cost of operations of the mental health institutes.

(aw) *Powers.* 1. Within the limits of state and county appropriations and maximum available funding from other sources, a county department of community programs may provide for the program needs of persons suffering from mental disabilities, including but not limited to mental illness: developmental disability, alcoholism or drug abuse, by offering the following services:

a. Precare, aftercare and rehabilitation and habilitation services.

b. Professional consultation.

c. Public informational and educational services.

d. Provide treatment and services that are specified in a conditional release plan approved by a court for a person who is a county resident and is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or **s.** 980.08 *(5).* If the county department provides treatment and services under this subdivision, the department of health and family services shall, from the appropriation under **s.** 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

2. A county department of community programs may allocate services among service recipients to reflect the availability of limited resources.

3. A county department of community programs may own, lease or manage real property for the purposes of operating a treatment facility.

(b) *Other powers and duties.* The county board of supervisors of any county with a single-county department of community programs and the county boards of supervisors of counties with a multicounty department of community programs may designate the county department of community programs as the administrator of any other county health care program or institution, but the operation of such program or institution is not reimbursable under s. 51.423.

(bm) *Educational services.* A county department of community programs may not furnish services and programs provided by the department of public instruction and local educational agencies.

(c) *Multicounty contract.* No grant-in-aid may be made under **s.** 51.423 to any multicounty department of community programs until the counties which established the multicounty department of community programs have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(e) *Exchange of information.* Notwithstanding **ss.** 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of a county department of community programs acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of community programs, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of community programs or with a resource center, care management organization or family care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of community programs to coordinate the delivery of services to the client.

(4) COUNTY COMMUNITY PROGRAMS HOARD. (a) *Appointment.* 1. Except as provided under subd. 2., the county board of supervisors of every county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs shall, before qualification under this section, appoint a governing and policy-making board to be known as the county community programs board. A county community programs board appointed under this subdivision shall govern the single-county or multicounty department of community programs and shall assume all of the powers and duties of the county department of community programs under sub. (3) (ar) to (bm). A member of a county community programs board appointed under this subdivision may be removed from office under the following circumstances:

a. For cause, by a two-thirds vote of each county board of supervisors participating in the appointment, on due notice in writing and hearing of the charges against the member.

b. If the member when appointed was a member of the county board of supervisors and the member is not reelected to that office, on due notice in writing.

2. In any county with a county executive or county administrator and which has established a single-county department of community programs, the county exceutive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county community programs board, which shall be only a policy-making body determining the broad outlines and principles governing the administration of programs under this section. A member of a county community programs board appointed under this subdivision may be removed by the county executive or county administrator under the following circumstances:

a. For cause.

b. If the member when appointed was a member of the county board of supervisors and the member is not reelected to that office.

(b) *Composition.* 1. In a single-county department of community programs the county community programs board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the mentally ill, developmentally disabled, alcoholic or drug dependent persons and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic and the interest group of the drug dependent. At least one member appointed to a county

community programs board shall be an individual who receives or has received services for mental illness. developmental disability, alcoholism or drug dependency or shall be a family member of such an individual. No more than 5 members may be appointed from the county board of supervisors.

2. In a multicounty department of community programs, the county community programs board shall be composed of 11 members with 3 additional members for each county in a multicounty department of community programs in excess of 2. Appointments shall be made by the county boards of supervisors of the counties in a multicounty department of community programs in a manner acceptable to the counties in the multicounty department of community programs and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic and the interest group of the drug dependent. At least one member appointed to a county community programs board shall be an individual who receives or has received services for mental illness, developmental disability, alcoholism or drug dependency or shall be a family member of such an individual. Each of the counties in the multicounty department of community programs may appoint to the county community programs board not more than 3 members from its county board of supervisors.

(d) *Term.* The term of office of any member of a county community programs board shall be 3 years, but of the members first appointed, at least one–third shall be appointed for one year; at least one–third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made.

(5) POWERS AND DUTIES OF COUKTY COMMUNITY PROGRAMS BOARD IN CERTAIN COUNTIES. (a) A county community programs board appointed under sub. (4) (a) 1. shall do all of the following:

1. Establish long–range goals and intermediate–range plans, detail priorities and estimate costs.

2. Develop coordination of local services and continuity of care where indicated.

3. Utilize available community resources and develop new resources necessary to carry out the purposes of this section.

4. Appoint a county community programs director, subject to the approval of each county board of supervisors which participated in the appointment of the county community programs board, on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, developmental disability, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the county community programs director under sub. (6). The county board of supervisors in a county with a single–county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs may delegate this appointing authority to the county community programs board.

5. Fix the salaries of the employees of the county department of community programs, subject to the approval of each county board of supervisors which participated in the appointment of the county community programs board unless such county board of supervisors elects not to review the salaries.

6. Prepare a proposed budget for submission to the county board and a final budget for submission to the department of health and family services in accordance with s. 46.031 (I).

7. Appoint committees consisting of residents of the county to advise the county community programs board as it deems necessary.

8. Develop county community programs board operating procedures.

9. Comply with state requirements.

10. Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

11. Evaluate service delivery.

12. Determine, subject to the approval of the county board of supervisors in a county with a single–county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs and with the advice of the county community programs director appointed under subd. 4., whether services are to be provided directly by the county department of community programs or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single–county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs may elect to require the approval of any such contract by the county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs.

13. Administer funds provided under s. 46.266 in accordance with s. 46.266 *(5)*.

(b) Subject to the approval of the county board of supervisors in a county with a single–county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs and with the advice of the county community programs director appointed under par. (a) 4., a county community programs board appointed under sub. (4) (a) 1. may, together with a private or public organization or affiliation: do all of the following:

1. Organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any mental health–related service.

2. Participate in the financing of the entity under subd. 1.

3. Provide administrative and financial services or resources for operation of the entity under subd. 1. on terms prescribed by the county board of supervisors.

(5a) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS BOARD IN CERTAIN COUNTIES WITH A COUKTY EXECUTIVE OR COUNTY ADMINISTRATOR. (a) A county community programs board appointed under sub. (4) (a) 2. shall do all of the following:

1. Appoint committees consisting of residents of the county to advise the county comniunity programs board as it deems necessary.

2. Recommend program priorities, identify unmet service needs and prepare short–term and long–term plans and budgets for meeting such priorities and needs.

3. Prepare, with the assistance of the county community programs director appointed under sub. (6m), a proposed budget for submission to the county executive or county administrator and a final budget for submission to the department of health and family services in accordance with s. 46.031 (1) for authorized services.

4. Advise the county community programs director appointed under sub. (6m) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

5. Develop county community programs board operating procedures.

6. Comply with state requirements.

7. Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

8. Advise the county community programs director regarding coordination of local services and continuity of care.

(b) The county community programs director, subject only to the supervision of the county executive or county administrator, may do all of the following:

1. Organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any mental health–related service.

2. Participate in the financing of the entity under subd. 1.

3. Provide administrative and financial services or resources for operation of the entity under subd. 1. on terms prescribed by the county executive or county administrator.

(6) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES. A county community programs director appointed under sub. (5) (a) 4. shall have all of the administrative and executive powers and duties of managing, operating, maintaining and improving the programs of the county department of community programs, subject to such delegation of authority as is not inconsistent with this section and the rules of the department of health and family services promulgated under this section. In consultation and agreement with the county community programs board, the county community programs director appointed under sub. (5) (d) shall do all of the following:

{a) Prepare an annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section in which priorities and objectives for the year are established as well as any modifications of long–range objectives.

(b) Prepare intermediate–range plans.

(c) Prepare an annual report of the operation of the program.

(d) Prepare other reports as are required by the secretary and the county board of supervisors in a county with a single–county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs.

(e) Make recommendations to the county community programs board under sub. (5) for all of the following:

1. Personnel and the salaries of employees.

2. Changes in program services.

(f) After consultation with the county community programs board, administer the duties of the county department of community programs under sub. (3) (aw) 2.

(g) Comply with state requirements.

(6m) COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES WITH 4 COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or county administrator in which the county board of supervisors has established a single–county department of community programs, the county executive or county administrator shall appoint and supervise the county community programs director. In any county with a population of 500,000 or more, the county executive or county administrator shall appoint the director of the county department of human services under s. 46.21 as the county community programs director. The appointment of a county community programs director under this subsection shall be on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, mental retardation, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the director. The appointment of a county community programs director under this subsection is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The county community programs director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program established under this section, subject to such delegation of authority as is not inconsistcnt with this section and the rules of the department of health and family services promulgated under this section.

(b) Determine administrative and program procedures.

(c) Determine, subject to the approval of the county board of supervisors and with the advice of the county community programs board, whether services are to be provided directly by the county department of community programs or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

(e) Assist the county community programs board under sub. (5a) in the preparation of the budgets required under sub. (5a) (a) 3.

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county community programs board under sub. (5a) (a) 3.

(g) Evaluate service delivery.

(h) After consultation with the county community programs board under sub. (5a), administer the duties of the county department of community programs under sub. (3) (aw) 2.

(i) Establish salaries and personnel policies of the programs of the county department of community programs subject to approval of the county executive or county administrator and county board of supervisors unless the county board of supervisors elects not to review the salaries and personnel policies.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

(L) Utilize available community resources and develop new resources necessary to carry out the purposes of this section.

(in) In consultation with the county community programs board under sub. (5a), prepare:

1. Intermediate.--range plans and budget.

2. An annual report of the operation of the county department of community programs.

3. Such other reports as are required by the secretary and the county hoard of supervisors.

(n) Provide for coordination of local services and continuity of care.

(o) Administer funds provided under s. 46.266 in accordance with s. 46.266 (5).

(7) DUTIES OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICES. (a) The department of health and family services shall:

1. Review requests and certify county departments of community programs and community mental health programs to assure that those county departments and those programs are in compliance with this section.

2. Periodically review and evaluate county departments of community programs to assure compliance with this section. The review shall include a periodic assessment of need which shall separately identify elements of service required under this section. The periodic review of community mental health programs shall be made at least once every 36 months, except that all of the following apply:

a. The secretary may require annual review of a community mental health program that, in the immediately preceding 36 months, substantially failed to comply with the requirements for certification or was the subject of grievances or an investigation.

b. The department may review and evaluate a community mental health program at any time.

2m. Review and evaluate at random at least 5 community mental health programs each year. Review and evaluation under this subdivision may be coincident with or in addition to that made under subd. 2. and may be conducted with or without notice to a community mental health program.

3. Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

3m. Develop a training curriculum for use in training members of county community programs boards and county human services boards. The training curriculum shall delineate the board members' roles and responsibilities and shall provide information on client groups served and programs provided by the county department of community programs or human services. In devel-

oping the training curriculum, the department shall consult with representatives of county interests, consumer and advocacy groups and community mental health program providers. The department shall submit the training curriculum to the council on mental health under s. 51.02 (1) (h) for the council's review and comment.

3r. Establish a training schedule that ensures that county community programs boards and county human services boards in all geographical areas of the state are provided access to training under the training curriculum under subd. 3m. once every 2 years.

4. Develop and implement a uniform cost reporting system according to s. 46.1 8 (8) to (10).

5. Ensure that county departments of community programs that elect to provide special education programs to children aged 3 years and under comply with requirements established by the department of public instruction.

6. Provide, as available after provision of services under s. 51.05 (6), the following:

a. Mental health outpatient and follow–up services appropriate for hearing–impaired mentally ill individuals, including advocacy training relating to the rights of mentally ill individuals.

b. Technical assistance to a county department of community programs concerning provision of services to hearing–impaired mentally ill individuals.

7. Develop a program in consultation with the department of regulation and licensing to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in evaluating community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (c) and 455.065 (5)

8. Enter into an agreement with an institution of higher education or a private, nonprofit organization to develop a community mental health client survey prototype. The department shall attempt to secure a grant to fund the development of the survey prototype.

9. Develop a model community mental health plan available for use by counties and to assist them in developing their community plans as required under s. 51.42 (3) (ar) 5. In the process of developing the model community mental health plan, the department shall select 6 counties, both urban and rural, to submit plans to the department for review. The department shall revise the model plan, if necessary, considering the comments of the 6 counties selected. The dcpartment shall also consult with the council on mental health and with groups that represent counties, consumers of mental health services and family members of the consumers in developing the model community mental health plan. The department shall establish a schedule that requires each county in this state to submit a plan under s. 51.42 (3) (ar) 5. once every 3 years, in accordance with deadlines established by the subunit of the department with jurisdiction over community mental health. The department, in conjunction with the council on mental health, shall review the plans submitted by counties.

(b) The department shall promulgate rules which do all of the following:

1. Govern the administrative structure deemed necessary to administer community mental health. developmental disabilities, alcoholism and drug abuse services.

2. Establish uniforni cost record–keeping requirements.

3. Prescribe standards for qualifications and salaries of personnel.

4. Prescribe standards for quality of professional services.

5. Prescribe requirements for in–service and educational leave programs for personnel.

6. Prescribe standards for establishing patient fee schedules.

7. Govern eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay.

7m. Define "first priority for services" under and otherwise implement sub. (3) (ar) 4m.

8. Prescribe such other standards and requirements as may be necessary to carry out the purposes of this section.

9. Promulgate rules establishing medication procedures to be used in the delivery of mental health services.

10. Establish criteria for the level of scrutiny for evaluation of community mental health programs.

11. Prescribe requirements for certification of community mental health programs, except as provided in s. 51.032, including all of the following:

a. **A** requirement that, as part of the certification process, community mental health programs must demonstrate that their staff have knowledge of laws, regulations and standards of practice which apply to the program and its clients.

b. **A** requirement that, when conducting certifications, certification staff must use a random selection process in reviewing client records.

c. **A** requirement that certification staff conduct client interviews as part of the certification process.

d. **A** requirement that certification staff provide certification results to the community mental health program reviewed, to subunits within the department responsible for community mental health program monitoring and to the county department under this section in which the community mental health program is located upon completion of certification.

(c) The secretary shall designate the subunit of the department that is responsible for supervising the grievance process for clients of mental health services.

(8) CONSTRUCTION. (a) Any reference in any law to a county department of community programs applies to a county department under s. 46.23 in its administration of the powers and duties of the county department of community programs under s. 46.23 (3) (b) or applies to a county department under s. 46.21 (2m) in its administration of the powers and duties of the county department of community programs under s. 46.21 (2m) (b) 1. a.

(b) 1. Any reference in any law to a county community programs director appointed under sub. (5) (a) 4. applies to the director of a county department appointed under s. 46.23 (5)(f) in his or her administration of the powers and duties of that county community programs director.

2. Any reference in any law to a county community programs director appointed under sub. (6m) (intro.) applies to the director of a county department appointed under s. 46.23 (6m) (intro.) or appointed under s. 46.21 (1m) (a) in his or her administration of the powers and duties of that county community programs director.

(c) 1. Any reference in any law to a county community programs board appointed under sub. (4) (a) 1. applies to the board of a county department appointed under s. 46.23 (4) (b) 1. in its administration of the powers and duties of that county community programs board.

2. a. Except as provided in subd. 2. b., reference in any law to a county community programs board appointed under sub. (4) (a) 2. applies to the board of a county department appointed under s. 46.23 (4) (b) 2. in its adniinistration of the powers and duties of that county community programs board.

b. Any reference in any law to a county community programs board appointed under sub. (4) (a) 2. is limited. with respect to the county department of human services under s. 46.21 (2m), to the powers and duties of the county community programs board as specified in sub. (5a).

History: 1971 c. 125: 1973 c. 90, **198, 333, 336**; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. **24** to 31, 80; 1977 c. 26 **ss.** 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 3656 (18); 1977 c. 193; 1977 c. 203 s. **106**; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34,117, **177, 221, 330, 355**; 1981 **c. 20 ss. 923** to 942,2202 (20) (d), (n), (q); 1981 c. 93 **ss. 105** to 122, 186: **1981 c.** 329; 1983 a. 27 ss. 1106 to 1112,2202 (20); 1983 a. 189 ss. 44,329 (5); 1983 a. 192,239,365,375, **524**; 1985 a. 29. 120, 176; 1987 a. 3, 27, 199. **339. 366**; 1989 a. 31, 122: 1991 a. **39**, 274, 315; 1993 a. **16, 437, 445**; 1995 a. 27 ss. 3260 to **3262. 9126** (19), 9145 **(1)** 1995

a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164,237,268; 1999 a. 9; 2001 a. 10,16, 38.

Cross Reference: See also clis. **HFS** 34, 40, 61, 63, 65. and 75, Wis. adm. code.

Costs could not he assessed against the subject of an emergency protective placement proceeding that was outside of the statutory guidelines under *s.* 55.06 (11). Ethelyn I.C. v. Waukesha County, 221 Wis. 2d 109,584 N.W.2d 211 (Ct. App. 1998).

Members of a county board appointed to a unified board. created under sub. (4) (b), serve for the full term for which appointed, without reference to the termination of their office as county board members. *63* **Atty.** Gen. 203.

The corporation counsel should provide legal advice and representation to *ss.* 51.42 and 51.437 hoards as well as to the county hoard. 63 **Atty.** Gen. 468.

Liability, reimbursement. and collection for services provided under ss. 51.42 and 51.437 programs are discussed. 63 **Atty.** Gen. 560.65 Atty. Gen. 49.

The county board of supervisors may require its approval of contracts for purchase of services by a community services board if it so specified in its coordinated plan and budget. Otherwise it may not. 69 **Atty.** Gen. 128.

Menominee Tribe members are eligible to participate in voluntary programs hut the state cannot accept tribe members into involuntary programs on the basis of tribal court orders alone. 70 Atty. Gen. 219.

A multicounty 51.42/51.437 board may retain private legal counsel only when the corporation counsel of each county. or the district attorney of each county not having a corporation counsel, notifies the hoard that he or she is unable to provide specific services in a timely manner. 73 Atty. Gen. 8.

The appointing authority has broad discretion to determine the interests and abilities of persons appointed to a "51.42 hoard." 78 Atty. Gen. 56.

51.421 Community support programs. (1) PURPOSE. In order to provide the least restrictive and most appropriate care and treatment for persons with chronic mental illness. community support programs should be available in all parts of the state. In order to integrate community support programs with other long–term care programs, community support programs shall be coordinated, to the greatest extent possible, with the community options program under s. 46.27, with the protective services system in a county, with the medical assistance program under subch. IV of ch. 49 and with other care and treatment programs for persons with chronic mental illness.

(2) SERVICES. If funds are provided, and within the limits of the availability of funds provided under s. 51.423(2), each county department under s. 51.42 shall establish a community support program. Each community support program shall use a coordinated case management system and shall provide or assure access to services for persons with chronic mental illness who reside within the community. Services provided or coordinated through a community support program shall include asscssmcnt, diagnosis, identification of persons in need of services, case management, crisis intervention, psychiatric treatment including medication supervision, counseling and psychotherapy, activities of daily living, psychosocial rehabilitation which may include services provided by day treatment programs, client advocacy including assistance in applying for any financial support for which the client may be eligible, residential services and recreational activities. Services shall be provided to an individual based upon his or her treatment and psychosocial rehabilitation needs.

(3) DEPARTMENTAL DUTIES. The department shall:

(a) Promulgate rules establishing standards for the certified provision of community support programs by county departments under s. 51.42, except as provided in s. 51.032. The department shall establish standards that ensure that providers of services meet federal standards for certification of providers of community support program services under the medical assistance program, 42 USC 1396 to 1397e. The department shall develop the standards in consultation with representatives of county departments under s. 51.42, elected county officials and consumer advocates.

(b) Ensure the development of a community support program in each county through the provision of technical assistance, consultation and funding.

(c) Monitor the establishment and the continuing operation of community support programs and ensure that community support programs comply with the standards promulgated by rule. The department shall ensure that the persons monitoring community support programs to determine compliance with the standards are persons who are knowledgeable about treatment programs for persons with chronic mental illness.

(d) Develop and conduct training programs for community support program staff.

(e) Distribute, from the appropriation under s. 20.435 **(7)** (bL), in each fiscal year for community support program services.

History: 1983 a. 441; 1985 a. 120, 176: 1987 a. 27.368; 1989 a. 31; 1993 a. 16; 1995 a. 27: 1997 a. 237; 2001 a. 16.

Cross Reference: See **also** chs. HFS 63 and 65, Wis. adm. code.

51.423 Grants–in–aid. (1) The department shall fund, within the limits of the department's allocation for mental health services under s. 20.435 (3) (o) and (7) (b) and (o) and subject to this section. services for mental illness, developmental disability, alcoholism, and drug abuse to meet standards of service quality and accessibility. The department's primary responsibility is to guarantee that county departments established under either s. 51.42 or 51.437 receive a reasonably uniform minimum level of fiinding and its secondary responsibility is to fund programs which meet exceptional community needs or provide specialized or innovative services. Moneys appropriated under s. 20.435 (7) (b) and earmarked by the department for mental health services under s. 20.435 (7) (o) shall be allocated by the department to county departments under s. 51.42 or 51.437 in the manner set forth in this section.

(2) From the appropriations under s. 20.435 (3) (o) and *(7)* (b) and (o), the department shall distribute the funding for services provided or purchased by county departments under s. 46.23, 51.42, or 51.437 to such county departments as provided under s. 46.40. County matching funds are required for the distributions under s. 46.40 (2) and (9) (b). Each county's required match for the distributions undcr s. 46.40 (2) for a year equals 9.89% of the total of the county's distributions under s. 46.40 (2) for that year for which matching funds are rcquired plus the amount the county was required by s. 46.26 (2) (c), 1985 stats., to spend for juvenile delinquency–related services from its distribution for 1987. Each county's required match for the distribution under s. 46.40 (9) (b) for a year equals 9.89% of that county's amounts described in s. 46.40 (9) (a) (intro.) for that year. Matching funds may be from county tax levies, federal and state revenue sharing funds, or private donations to the counties that meet the requirements specified in sub. (5). Private donations may not exceed 25% of the total county match. If the county match is less than the amount required to generate the full amount of state and federal funds distributed for this period, the decrease in the amount of state and federal funds equals the difference between the required and the actual amount of county matching funds.

(3) From the appropriation under s. 20.435 (7) (bL), the department shall award one–time grants to applying counties that currently do not operate certified community support programs, to enable uncertified community support programs to meet requirements for certification as providers of medical assistance services.

(4) The department shall prorate the amount allocated to any county department under sub. (2) to reflect actual federal funds available.

(5) (a) **A** private donation to a county may be used to match the state grant–in–aid undcr s. 46.495 (1) (d) or under sub. (2) only if the donation is both of the following:

1. Donated to a county department under s. 46.2 15, 46.22, 51.42 or 51.437 and the donation is under the administrative control of such county department.

2. Donated without restrictions as to use, unless the restrictions specify that the donation be used for a particular service and the donor neither sponsors nor operates the service.

(b) Voluntary federated fund–raising organizations are not sponsors or operators of services within the meaning of par. (a) 2. Any member agency of such an organization that sponsors or operates services is deemed an autonomous entity separate from the organization unless the board membership of the organization and the agency interlock.

(6) The county allocation to match aid increases shall be included in the contract under s. 46.031 (2g) and approved by January 1 of the year for which the funds are allocated, in order to generate state aid matching funds. All funds allocated under sub. (2) shall be included in the contract under s. 46.031 (2g) and approved.

(7) Each county department under either s. 51.42 or 51.437, but not both, shall be treated, for the purpose of this section only, as unified with any other county department established in its jurisdiction under either s. 51.42 or 51.437 and shall receive an amount determined under sub. (2).

(9) If the fiinds appropriated under s. 20.435 (7) (b) for any fiscal year are insufficient to provide county departments with the sums calculated under subs. (1) to (7), the appropriation shall be allocated among county departments in proportion to the sums they would receive under subs. (1) to (7).

(10) Each county department which is eligible under the state plan for medical assistance shall obtain a medical assistance provider number and shall bill for all eligible clients. **A** county department operating an inpatient facility shall apply for a special hospital license under s. 50.33 (2) (c). Under powers delegated under s. 46.10 (16), each county department shall retain 100% of all collections it makes and its providers make for care other than that provided or purchased by the state.

(11) Each county department under s. 51.42 or 51.437, or both, shall apply all funds it receives under subs. (1) to (7) to provide the services required under ss. 51.42, 51.437 and 51.45 (2) (g) to meet the needs for service quality and accessibility of the persons in its jurisdiction, except that the county department may pay for inpatient treatment only with funds designated by the department for inpatient treatment. The county department may expand programs and services with county funds not used to match state funds under this section subject to the approval of the county board of supervisors in a county with a single–county department or the county boards of supervisors in counties with multicounty departments and with other local or private funds subject to the approval of the department and the county board of supervisors in a county with a single-county department under s. 51.42 or 51.437 or the county boards of supervisors in counties with a multicounty department under s. 51.42 or 51.437. The county board of supervisors in a county with a single–county department under s. 51.42 or 51.437 or the county boards of supervisors in counties with a multicounty dcpartment under s. 51.42 or 51.437 may delegate the authority to expand programs and services to the county department under s. 51.42 or 51.437. The county department under s. 51.42 or 51.437 shall report to the department all county funds allocated to the county department under s. 51.42 or 51.437 and the use of such funds. Moneys collected under s. 46.10 shall be applied to cover the costs of primary services, exceptional and specialized services or to reimburse supplemental appropriations funded by counties. County departments under ss. 51.42 and 51.437 shall include collections made on and after October 1, 1978, by the department that are subject to s. 46.10 (8m) (a) 3. and 4. and are distributed to county departments under ss. 51.42 and 51.437 under s. 20.435 (7) (gg), as revenues on their grant–in–aid expenditure reports to the department.

(12) The department may not provide state aid to any county department under s. 51.42 or 51.437 for excessive inpatient treatment. For each county department under ss. 51.42 and 51.437 in each calendar year, sums expended for the 22nd and all subsequent average days of care shall be deemed excessive inpatient treatment. No inpatient treatment provided to children, adolescents, chronically mentally ill patients, patients requiring specialized care at a mental health institute, or patients at the centers for the developmentally disabled may be deemed excessive. If a patient is discharged or rclcascd and then readmitted within 60 days after such discharge or release from an inpatient facility, the number of days of care following readmission shall be added to the number of days of care before discharge or release for the purpose of calculating the total length of such patient's stay in the inpatient facility.

(15) Funds allocated under this section and recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of any audit adjustment. By June 30 of each year the department shall submit to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

History: 1985 a. 176 ss. 452 to 454, 456 to 461, 463, 466; 1987 a. 21, 186; 1989 a. 31, 56, 122; 1991 a. 39, 269; 1993 a. 16,145; 1995 **a.** 27; 1997 **a.** 27; 1999 **a.** 9; 2001 a. 16.

51.437 Developmental disabilities services. (1) DEFINITION. In this section, "services" means specialized services or special adaptations of generic services directed toward the prevention and alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with such a disability, and includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care: special living arrangements, training, sheltered employment, protective and other social and socio–legal services, follow–along services and transportation services necessary to assure delivery of services to individuals with developmental disabilities.

(4) RESPONSIBILITY OF COUNTY GOVERNMENT. (a) The county board of supervisors has the primary governmental responsibility for the well–being of those developmentally disabled citizens residing within its county and the families of the developmentally disabled insofar as the usual resultant family stresses bear on the well–being of the developmentally disabled citizen. This primary governmental responsibility is limited to the programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(c) County liability for care and services purchased through or provided by a county department of developmental disabilities services established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency services" means those services provided under the authority of s. 51.15, 55.05 (4) or 55.06 (11) (a). Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party.

(49) COUNTY DEPARTMENT OF DEVELOPMEKTAL DISABILITIES SERVICES ESTABLISHED; INTEGRATION OF SERVICES. (a) Except as provided under par. (b) and ss. 46.21 (2m) (b) and 46.23 (3) (b), every county board of supervisors shall establish a county department of developmental disabilities services on a single-county or multicounty basis to furnish services within its county. Adjacent counties, lacking the financial resources and professional personnel needed to provide or secure such services on a single–county basis, may and shall be encouraged to combine their energies and financial resources to provide these joint services and facilities with the approval of the department of health and family services. The county department of developmental disabilities services shall consist of a county developmental disabilities services board, a county developmental disabilities services director and necessary personnel.

(b) A county board of supervisors may transfer the powers and duties of a county department of developmental disabilities services under this section to a county department under s. 51.42, which shall act under s. 51.42 (3) (ar) 3.

(c) In a county with a population of 500,000 or more, the county board of supervisors shall integrate day care programs for mentally retarded persons and those programs for persons with

other developmental disabilities into the county developmental disabilities program.

(4m) DUTIES OF COUNTY DEPARTMENT OF DEVELOPMENTAL DISABILITIES SERVICES. A county department of developmental disabilities services shall do all of the following:

(a) Within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, establish a county developmental disabilities services program. Such services shall be provided either directly or by contract.

(b) Develop, approve and modify on a continuing basis a single–county or multicounty plan for the delivery of services, including the construction of facilities, to those citizens affected by developmental disabilities. The purpose of the plan shall be to ensure the delivery of needed services and the prevention of unnecessary duplication, fragmentation of services and waste of resources. Plans shall include, to the fullest extent possible, participation by existing and planned agencies of the state, counties, municipalities, school districts and all other public and private agencies as are required to, or may agree to, participate in the delivery of services. The plan shall, to the fullest extent possible, be coordinated with and integrated into plans developed by regional comprehensive health planning agencies.

(c) Provide continuing counsel to public and private agencies as well as other appointed and elected bodies within the county.

(d) Establish a program of citizen information and education concerning the problems associated with developmental disabilities.

(e) Establish a fixed point of information and referral within the community for developmentally disabled individuals and their families. The fixed point of information and referral shall consist of a specific agency designated to provide information on the availability of services and the process by which the services may be obtained.

(f) Enter into contracts to provide or secure services From other agencies or resources including oat–of–state agencies or resources. Notwithstanding **ss.** 59.42 (1) and (2) (b) and 978.05, any multicounty department of developmental disabilities services may contract for professional legal services that are necessary to carry out the duties of the multicounty department of developmental disabilities services if the corporation counsel of each county of the multicounty department of developmental disabilities services has notified the multicounty department of developmental disabilities services that he or she is unable to provide those services in a timely manner.

(g) Acknowledge receipt of the notification received under **s.** 115.812 (2).

(h) Submit final budgets under **s.** 46.03 1 (1) for funding under s. 51.423.

(i) Annually report to the department of health and family services regarding the use of any contract entered into under s. 5 1.87

(j) By September 30, submit for inclusion as part of the proposed county budget to the county executive or county administrator or, in those counties without a county executive or county administrator, directly to the county board of supervisors in a county with a single–county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services a proposed budget for the succeeding calendar year covering services, including active treatment community mental health center scrvices, based on the plan required under s. 51.42 (3) (ar) 5. The final budget shall be submitted to the department of health and family services.

(k) Develop the cost of all services which it purchases based on the standards and requirements of s. 46.036.

(L) Except in an emergency, review and approve or disapprove all admissions to nursing homes of persons with a developmental disability who are residents of the county.

(m) If the county board of supervisors establishes an integrated service program for children with severe disabilities under s. 59.53 (7), participate in an integrated service program for children with severe disabilities under s. 59.53 (7), including entering into any written interagency agreements or contracts.

(n) If authorized under s. 46.283 (1) (a) 1., apply to the department of health and family services to operate a resource center under s. 46.283 and, if the department contracts with the county under **s.** 46.283 (2), operate the resource center.

(p) If authorized under **s.** 46.284 (1) (a) 1., apply to the department of health and family services to operate a care management organization under **s.** 46.284 and, if the department contracts with the county under s. 46.284 (2), operate the care management organization and, if appropriate, place funds in a risk reserve.

(4r) POWERS OF COUNTY DEPARTMENT OF DEVELOPMENTAL DISABILITIES SERVICES. (a) A county department of developmental disabilities services:

1. May not furnish services and programs provided by the department of public instruction and local educational agencies.

2. May allocate services among service recipients to reflect the availability of limited resources.

3. May administer an integrated service program for children with severe disabilities under s. 59.53 (7), if the county board of supervisors establishes an integrated service program for children with severe disabilities.

4. May own, lease or manage real property for the purposes of operating a treatment facility.

(b) Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07 (3) (c) and 938.78 (2) (a), any subunit of the county department of developmcntal disabilities serviccs acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of developmental disabilities services, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of developmental disabilities services or with a resource center, care management organization or family care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of developmental disabilities services to coordinate the delivery of services to the client.

(4rm) COST OF SERVICES. (a) A county department of developmental disabilities services shall authorize all care of any patient in a state, local or private facility under a contractual agreement between the county department of developmental disabilities services and the facility, unless the county department of developmental disabilities services governs the facility. The need for inpatient care shall be determined by the program director or designee in consultation with and upon the recommendation of a licensed physician trained in psychiatry and employed by the county department of developmental disabilities services or **its** contract agency prior to the admission of a patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any county department of developmental disabilities services shall charge the county department of developmental disabilities scrviccs having jurisdiction in the county where the individual receiving care **is** found. The county department of developmental disabilities services shall reimburse the facility, except as provided under par. (c), for the actual cost ***of*** all authorized care and services less applicable collections under **s.** 46.036. unless the department of health and family services deterniines that a charge is administratively infeasible, or unless the department of health and family services, after individual rcvicw, determines that the charge is not attributable to the cost of basic care and scrviccs. The exclusionary provisions of **s.** 46.03 (18) do not apply to direct and indirect costs which are attributable

to care and treatment of the client. County departments of developmental disabilities services may not reimburse any state institution or receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a), commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17 or 975.06, admissions under s. 975.17, 1977 stats., children placed in the guardianship of the department of health and family services under s. 48.427 or 48.43 or juveniles under the supervision of the department of corrections under s. 938.183 or 938.355.

(b) If any of the county developmental disabilities services authorized under par. (a) are provided by any of the institutions specified in s. 46.10, the costs of such services shall be segregated from the costs of residential care provided at such institutions. The uniform cost record–keeping system established under s. 46.18 (8) to (10) shall provide for such segregation of costs.

(c) If a center for the developmentally disabled has provided a county department of developmental disabilities services under this section with service, the department of health and family services shall:

1. Regularly bill the county department of developmental disabilities services for services as specified in par. (c) 2. a. and 2m. Under this section, collections on or after January 1, 1976, from medical assistance shall be the approved amounts listed by the patient on remittance advices from the medical assistance carrier, not including adjustments due to retroactive rate approval and less any refunds to the medical assistance program. For care provided on and after January 1, 1978, the department of health and family services shall adjust collections from medical assistance to compensate for differences between specific rate scales for care charged to the county department of developmental disabilities services and the average daily medical assistance reimbursement rate. Payment shall bc due from the county department of developmental disabilities services within 60 days of the billing date subject to provisions of the contract. If any payment has not been received within 60 days, the department of health and family services shall deduct all or part of the amount due from any payment due from the department of health and family services to the county department of developmental disabilities services.

2. a. Bill the county department of developmental disabilities services for services provided on or after January 1, 1982, to persons ineligible for medical assistance benefits and who lack other means of full payment, using the procedure established under subd. 1.

b. Bill the county department of developmental disabilities services for services provided on or after December 31, 1997, at $48 per day, if an independent professional review established under 42 USC 1396a (a) (31) designates the person served as appropriate for community care, including persons who have been admitted for more than 180 consecutive days and for whom the cost of care in the community would be less than $184 per day. The department of health and family services shall use money it receives from the county department of developmental disabilities services to offset the state's share of medical assistance. Payment is due from the county department of developmental disabilities services within 60 days of the billing date. subject to provisions of the contract. If the department of health and family services does not receive any payment within 60 days, it shall deduct all or part of the amount due from any payment the department of health and family services is required to make to the county department of developmental disabilities services. The department of health and family scrviccs shall first use collections received under s. 46.10 as a result of care at a center for the developmentally disabled to reduce the costs paid by medical assistance, and shall remit the remainder to the county department of developmental disabilities services up to the portion billed. The department of health and family services shall use the appropriation under s. 20.435 (2) (gk) to remit collection credits and other appropriate refunds to county departments of developmental disabilities services.

c. Regularly provide the county department of developmental disabilities services with a list of persons who are eligible for medical assistance benefits and who are receiving care in a center for the developmentally disabled.

2m. Bill the county department of developmental disabilities services for services provided under s. 51.06 (Im) (d) to individuals who are eligible for medical assistance that are not provided by the federal government, using the procedure established under subd. 1.

3. Establish by rule a process for appealing determinations of the independent professional review that result in billings under subd. 2. b.

Cross Reference: *See* also ch. HFS 86. Wis. adm. code.

(7) COUNTY DEVELOPMEYTAL DISABILITIES SERVICES BOARD. (a) *Appointments.* 1. Except as provided under subd. 2., the county board of supervisors in a county with a single–county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty dcpartmcnt of developmental disabilities services shall, before qualification under this section, appoint a county developmental disabilities services board. A county developmental disabilities services board appointed under this subdivision shall govern the single–county or multicounty department of developmental disabilities services. A member of a county developmental disabilities services board appointed under this subdivision may be removed from office for cause by a two–thirds vote of the appointing authority, on due notice in writing and hearing of the charges against the member.

2. In any county with a county executive or county administrator and which has established a single–county department of developmental disabilities services, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county developmental disabilities services board, which shall be only a policy–making body determining the broad outlines and principles governing the administration of programs under this section. A member of the county dcvelopmcntal disabilities services board appointed under this subdivision may be removed by the county executive or county administrator for cause.

(am) *Composition.* 1. In a single–county department of developmental disabilities services, the county developmental disabilities services board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the developmentally disabled but not more than 3 members shall be appointed from the county board of supervisors.

2. In a multicounty department of developmental disabilities services, the county developmental disabilities services board shall be composed of 11 members and with 2 additional members for each county in a multicounty department of developmental disabilities services in excess of 2. Appointments shall be made by the county boards of supervisors of the counties in a multicounty department of developmental disabilities services in a manner acceptable to the counties in the multicounty department of developmental disabilities services, but each of the counties in the multicounty department of developmental disabilities services may appoint only 2 members from its county board of supervisors.

3. At least one–third of the members of every county developmental disabilities services board serving at any one time shall be appointed from the developmentally disabled citizens or their parents residing in a county with a single–county department of developmental disabilities services or in any of the counties with a multicounty department of developmental disabilities services.

(b) *Terms.* Appointments to the county developmental disabilities services board shall be for staggered 3–year terms. Vacancies