WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF PSYCHOLOGY

FEBRUARY 2003

State of Wisconsin
Department of Regulation and Licensing
Psychology Examining Board
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TABLE OF CONTENTS

		Page
Introduction		iii

Excerpts from the Wisconsin Statutes

Chapter 15	Structure of the Executive Branch	1
Chapter 19	Public Records and Property	11
Chapter 48	Children's Code	12
Chapter 51	State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act	26
Chapter 55	Protective Service System	86
Chapter 146	Miscellaneous Health Provisions	93
Chapter 252	Communicable Diseases	100
Chapter 440	Department of Regulation & Licensing	106
Chapter 450	Disciplinary Proceedings; Immunity; Orders	114
Chapter 455	Psychology Examining Board	115
Chapter 457	Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board	119
Chapter 767	Actions Affecting the Family	121
Chapter 880	Guardians and Wards	126
Chapter 895	Miscellaneous General Provisions	130
Chapter 905	Evidence - Privileges	131
Chapter 938	Disposition of Juvenile Adjudged Delinquent	137
Chapter 940	Sexual Exploitation by Therapists; Sexual Assault	143
Chapter 948	Crimes Against Children	145
Chapter 971	Criminal Procedure - Proceedings before and at Trial	157
Chapter 973	Domestic Abuse Assessments	163
Chapter 975	Sex Crimes Law	164
Chapter 980	Sexually Violent Person Commitments	167

Wisconsin Administrative Code Rules of the Psychology Examining;Board

PSY 1	Authority and definitions	174
PSY 2	Requirements for examination and licensure of psychologists	175
PSY 3	Requirements for the private practice of school psychology	179
PSY 4	Requirements for renewal	181
PSY 5	Conduct	183
	Filing a complaint	209

Excerpts from the Rules of the Department of Regulation and Licensing

RL 1	Procedures to review denial of an application	185
RL 2	Procedures for pleading and hearings	189
RL 3	Administrative injunctions	193
Fa 4	Department application procedures and application fee policies	196
RL 6	Summary suspensions	198
Fa 7	Impaired professionals procedure	200
RL 8	Administrative warnings	205
Fa 9	Denial of renewal application because applicant is liable for delinquent taxes	208
	Index	211

INTRODUCTION

The Psychology Examining Board licenses and regulates psychologists. The Psychology Examining Board is composed of members of the profession and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to various professional boards. Within the department the Bureau of Health Service Professions provides administrative services to the Psychology Examining Board. Questions about board business may be directed to the examining board in care of the Bureau of Health Service Professions, PO Box 8935, Madison WI 53708.

This book contains statutes and rules relevant to the regulation and practice of psychology in Wisconsin. These statutes and rules are part of the law of Wisconsin. To assist in using these materials, a subject index is included at the end of the book. Only a limited number of statutes and rules are included in this book.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, PO Box 7840, Madison WI 53707.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.html

Rules: http://www.legis.state.wi.us/rsb/code/codtoc.html

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration of policy.
15.01 Definitions.
15.02 Offices, departments and independent agencies.
15.03 Attachment for limited purposes.
15.04 Heads of departments and independent agencies; powers and duties.
15.05 Secretaries.
15.06 Commissions and commissioners.
15.07 Boards.
15.08 Examining boards and councils.
15.085 Affiliated credentialing hoards.
15.09 Councils.

SUBCHAPTER II
DEPARTMENTS

15.40 Department of regulation and licensing; creation.
15.405 Same; attached hoards and examining boards
15.406 Same; attached affiliated credentialing hoards
15.407 Same; councils.

SUBCHAPTER I.
GENERAL PROVISIONS.

15.001 Declaration of policy. (1) THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function–oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a. 3 16.

15.01 Definitions. In this chapter: **(Ig)** "Affiliated credentialing board" means a part–time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(Ir) "Board" means a part–time body functioning as the policy–making unit for a department or independent agency or a part–time body with policy–making or quasi–judicial powers.

(2) "Commission" means a 3–member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not *a* commission for purposes of s.15.06. The parole commission created under s.15.145 (1) shall be known as a "commission", but is not a commission for purposes of s. 15.06. The sentencing commission created under s. 15.105 (27) shall be known as a "commission" but is not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part–time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and (5) and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6),"Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to

the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" under this subsection. The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part–time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 c. 29,274; 1979 c. 34; 1983 a. 27, 189, 371,410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107,210,215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442,462; 1997 a. 27,237; 2001 a. 16,105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of...." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub. (4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long–term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27, 399; 1993 a. 16, 184,215,491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997 a. 27.

Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02

(7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties.(1) DUTIES. Each head of a department or independent agency shall:

(a) ***Supervision.*** Except as provided in s.15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) ***Budget.*** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) ***Advisory bodies.*** In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) ***Biennial report.*** On or before October 15 of each odd–numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) *Seal.* Have authority to adopt a seal for the department or independent agency.

(f) *Bonds.* Have authority to require that any officer or employee of the department or independent agency give an official bond under ch. 19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) *Discrimination review.* In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) *Records and forms management program.* Establish and maintain a records and forms management program.

(j) *Records and forms officer.* Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) *Form numbering and filing system.* Establish a numbering and filing system for forms.

(m) *Notice on forms.* See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub. (2) may be authorized only under s. 16.505.

History: 1971 c. 125; 1973 c. 94; 1977 c. 196,273,218,447; 1979 c. 221; 1981 c. 112,350; 1981 c. 391 s. 210; 1983 a. 27,524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73.

15.05 Secretaries.(1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy–making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s.15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub. (3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed **only** by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a board to serve at the board's pleasure. Moses v. Board of Veterans Affairs, 80 Wis. 2d 411, 259 N.W.2d 102 (1977).

15.06 Commissions and commissioners.(1) SELECTION OF MEMBERS.(a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6–year terms expiring on March 1 of the odd–numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5–year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6–year term expiring on March 1 of an odd–numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5–year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year.

(3) FULL–TIME OFFICES.(a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to: 1. The commissioner of insurance. 3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the

commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) FREQUENCY OF MEETINGS; PLACE. Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub. (4m) may be authorized only under s. 16.505.

History: 1971 c. 193,307; 1977 c. 29, 196,274; 1981 c. 347; 1983 a. 27, 371, 410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39,269,316; 1993 a. 16, 123; 1995 a. 27: 1997 a. 27: 2001 a. 16.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub. (2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary' increase based on that designation. 76 Atty. Gen. 52.

Sub. (3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards.(1) SELECTION OF MEMBERS.(a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s.15.61.

3. Members of the employee trust funds board appointed or elected under s.15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s.15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s.15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s.15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par. (a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long–term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under s.15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under s.15.445 (4) (a) 3. to 5.
16. Land information board.

Note: Subd. 16, is repealed eff. 9–1–03 by 1997 Wis. Act 27.

17. Real estate appraisers board.
18. Savings bank review board.
19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under s.15.445 (2) (b) 3.
22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1–1–10 by 1999 Wis. Act 9.

(c) Except as provided under par. (cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd–numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s.15.155 (1) (a) 6. shall expire on May 1 of every even–numbered year and the terms of the other 3 members appointed under s.15.155 (1) (a) 6. shall expire on May 1 of every odd–numbered year. The terms of the 3 members of the land and water conservation board appointed under s.15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s.15.135 (4) (b) 2m. shall expire on May 1 of an even–numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even–numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s.15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even–numbered year, the state capitol and executive residence board shall elect officers for 2–year terms.

(k) The governor shall serve as chairperson of the governor's work–based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS.(a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even–numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par. (bm), each board not covered under par. (a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate

appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub. (5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, $50 per day.

(b) Members of the banking review board, $25 per day but not to exceed $1,500 per year.

(c) Members of the auctioneer board, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding $35 per day as fixed by the board with the approval of the governor, but not to exceed $1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive $100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, $25 per day.

(g) Members of the savings and loan review board, $10 per day.

(gm) Members of the savings bank review board, $10 per day.

(h) Voting members of the land and water conservation board, $25 per day.

(i) Members of the educational approval board, $25 per day.

(j) Members of the state fair park board, $10 per day but not to exceed $600 per year.

(k) Members of the ethics board, $25 per day.

(L) Members of the school district boundary appeal board, $25 per day.

(n) Members of the elections board, $25 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate board, $25 per day.

(s) Members of the credit union review board, $25 per day but not to exceed $1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, $35 per day.

(w) Members of the lower Wisconsin state riverway board, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, $25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES.(b) *Lower Wisconsin state riverway board.* The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub. (5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid $25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state rivenvay board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125,261,270,323; 1973 c. 90, 186,299,334; 1978 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979c.34, 110,221,346; 1981 c. 20, 62, 94, 96, 186,314,346,374,391; 1983 a. 27. 282,403; 1985 a. 20, 29,316; 1987 a. 27, 119, 142, 384, 399,403; 1989 a. 31, 102, 114,219,299,340; 1991 a. 25, 39, 116,221,269,316; 1993 a. 16, 75, 102,184,349, 399,490; 1995 a. 27,216,247; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub. (4) means the authorized number of positions and not the number ofpositions that are currently occupied. 66 **Atty.** Gen. 192.

15.08 Examining boards and councils.(1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS.(a) Public members appointed under s.15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS.(a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229,316,359; 1991 a. 39, 160,316; 1993 a. 105, 107, 184,490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105. **Selection and terms of officers of regulatory and licensing boards are discussed.** 75 Atty. Gen. 247 (1986).

15.085 Affiliated credentialing boards.(1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS.(a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS.(a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils.(1) SELECTION OF MEMBERS.(a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par. (b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd–numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 (17) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson, vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s.15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 *c.* 211; 1977 *c.* 29; 1977 *c.* 196 s. 131; 1979 c. 34.346; 1983 a. 27, 388,410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184.6. One person

15.40 Department of regulation and licensing; creation. There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 **to *21*.**

15.405 Same; attached boards and examining boards.(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of **7** members, appointed for staggered &year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4–year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members,

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS.(a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4–year terms:

1. Three members who are professional geologists licensed under ch. 470.

2. Three members who are professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for +year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4–year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3–year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Six dentists who are licensed under ch. 447.

Note: Par. (a) is shown as repealed and recreated eff. 12–31–02 by 2001 Wis. Act 16. Prior to 12–31–02 it reads: (a) Six dentists who are licensed *under* ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (Im) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

Note: Par. (b) is shown as repealed and recreated eff. 12–31-02 by 2001 Wis. Act 16. Prior to 12–31–02 it reads:

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s.15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) I. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech–language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.\

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par. (a) 1. shall consist of the following:

I. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding s.15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par. (f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING. There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4–year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4–year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in s. 458.09 (1).

3. Three public members

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under s. 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate–related business. Section 5.08 (1m) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding s.15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (Im) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule–making authority,

(12) VETERINARY EXAMINING BOARD. There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8

members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of *6* members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for &year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barhering or cosmetology, one member shall be a representative of a public school of barhering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may he connected with or have any financial interest in a barhering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27,403,485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264,265,316; 1989 a. 316,340; 1991 a. 39, 78, 160, 189,269; 1993 a. 16, 102,463,465,491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. I; 1995 a. 321,417; 1997 a. 96, 252, 300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to serve on the hoard of medical examiners. 62 Atty. Gen. 193.

An incumbent real estate examining board member is entitled lo hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior lo confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALMG BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is created eff. 4–1-04 by 2001 Wis. Act 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107,443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a. 70.

15.407 Same; councils.(1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of-.

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed hy the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and *(6)* to (10), applies to the examining councils.

(a) ***Registered nurses.*** There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) *Practical* ***nurses.*** There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4–year terms. Five members shall be real

estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par. (a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) **is created eff. 3–1–03 by 2001 Wis. Act** 74.

History: 1973 c. 149; 1975 c. 39, 86, 199,383,422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a.332 s. 251 (I); 1987 a. 399; 1989 a. 229,316,341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180,186; 2001 a. 74, 89.

CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS

SUBCHAPTER II
PUBLIC RECORDS AND PROPERTY

19.34 Procedural information

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

CHAPTER 48
CHILDREN'S CODE

SUBCHAPTER I
GENERAL PROVISIONS
48.01 Title and legislative purpose.
48.02 Definitions.
48.023 Guardianship.

SUBCHAPTER III
JURISDICTION
48.13 Jurisdiction over children alleged to be in need of protection or services.
48.135 Referral of children and expectant mothers of unborn children to proceedings under chapter 51 or 55.

SUBCHAPTER V
PROCEDURE
48.295 Physical, psychological, mental or developmental examination.
48.31 Fact-finding hearing.

SUBCHAPTER VI
DISPOSITION
48.373 Medical authorization.
48.375 Parental consent required prior to abortion; judicial waiver procedure

SUBCHAPTER VII
PERMANENCY PLANNING; RECORDS
48.396 Records.

SUBCHAPTER XX
MISCELLANEOUS PROVISIONS
48.981 Abused or neglected children and abused unborn children.

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

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

SUBCHAPTER I
GENERAL PROVISIONS

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

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

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

(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the child for the child to be removed from his or her parents, consistent with any applicable law relating to the rights of parents.

(am) To recognize that unbom children have certain basic needs which must be provided for, including the need to develop physically to their potential and the need to be free from physical harm due to the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. It is further recognized that, when an expectant mother of an unbom child suffers from a habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, in order to ensure that the needs of the unborn child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the unbom child for the exuectant mother to be ordered to receive treatment, including inpatient treatment, for that habitual lack of self-control, consistent with any applicable law relating to the rights of the expectant mother.

(ap) To recognize the compelling need to reduce the harmful financial, societal and emotional impacts that arise and the tremendous burdens that are placed on families and the community and on the health care, social services, educational and criminal justice systems as a result of the habitual lack of self-control of expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, during all stages of pregnancy.

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

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

(bm) To ensure that unbom children are protected against the harmful effects resulting from the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. To effectuate this purpose and the purpose specified in par.(am), it is the intent of the legislature that the provisions of this chapter that protect unbom children against those harmful effects and that provide for the needs of unborn children, as described in par. (am), shall be construed to apply throughout an expectant mother's pregnancy to the extent that application of those provisions throughout an expectant mother's pregnancy is constitutionally permissible and that expectant mothers who habitually lack self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, be encouraged to seek treatment for that habitual lack of self-control voluntarily when voluntary treatment would be practicable and effective.

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

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

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

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

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

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

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

(a) A member of an Indian tribe, as defined in 25 USC 1903 (8).

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

History: 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77,275; 1997 a. 237,292; 1999 a. **32.**

The "best interests of the child is a question of law. Adoption **of** Tachick, 60 Wis. 2d 540,210 N.W.2d 865 (1973).

The "paramount consideration" of the child's best interest does not mandate that the child's interests will always outweigh the public's. In Interest of B.B. 166 Wis. 2d 202,479 N.W.2d 205 (Ct. App. 1991).

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

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

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

48.02 Definitions. In this chapter, unless otherwise defined:

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

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self–control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under **s.** 940.225, 948.02 or 948.025.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) **A** violation of **s.** 948.055.

(f) **A** violation of **s.** 948.10.

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

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

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

(1m) "Alcoholism" has the meaning given in s. 51.01 (lm).

(1s) "Approved treatment facility" has the meaning given in **s.** 51.01 (2).

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

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

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

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

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

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

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

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

(5g) "Drug dependent" has the meaning given in **s.** 51.01 (8).

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

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

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in **s.** 48.625 (1).

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

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

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

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

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

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

(a) Age at the time of the person's birth.

(b) Nationality.

(c) Race.

(d) Education.

(e) General physical appearance.

(f) Talents, hobbies and special interests.

(h) Reason for placing the child for adoption or for the termination of parental rights.

(i) Religion.

(k) Family history.

(m) Personality traits of each parent.

(13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under **s.** 891.40, or a parent by adoption. If the child is a non-marital child who is not adopted or whose parents do not subsequently intermarry under **s.** 767.60, "parent" includes a person acknowledged under **s.** 767.62 (1) or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

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

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

(15) "Relative" means a parent, grandparent, great-grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. This relationship shall be by blood, marriage, or adoption.

(15d) "Residential care center for children and youth" means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(16) "Secure detention facility" means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(17) "Shelter care facility" means a non-secure place of temporary care and physical custody for children, including a holdover room, licensed by the department under **s.** 48.66 (1) (a).

(17m) "Special treatment or care" means professional services which need to be provided to a child or his or her family to protect the well–being of the child, prevent placement of the child outside the home or meet the special needs of the child. "Special treatment or care" also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when bom from the harmful effects resulting from the habitual lack of self–control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

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

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

(19) "Unborn child" means a human being from the time of fertilization to the time of birth.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447,449; 1979 c. 135,300,352; 1981 c. 81; 1983 a. 189,447,471; 1985 a. 176; 1987 a. 27, 285. 339: 1989 a. 31; Sup. Ct. Order. 151 Wis. 2d xxv (1989); 1989 a. 107: 1991 a. 39; 1993 a. 98, 375, 377, 385,446,491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352,448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

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

Under sub. (13), a deceased parent continues to be parent; a deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

A viable fetus is not a "person" within the definition of a child under sub. (2). State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

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

48.023 Guardianship. Except as limited by an order of the court under **s.** 48.977 (5) (b) or 48.978 (6) (b) 2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

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

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

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

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

History: 1977 c. 354; 1993 a. 385; 1995 a. 27, 77, 275, 352; 1997 a. 334.

A guardian may not recover for the loss of society and companionship of a ward, nor may the guardian bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999).

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.

SUBCHAPTER III
JURISDICTION

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

(1) Who is without a parent or guardian;

(2) Who has been abandoned;

(2m) Whose parent has relinquished custody of the child under s. 48.195 (1);

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

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

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

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

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

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

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

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

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

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

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

History: 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27,363,395,474; 1995 a. 77,275; 1997 a. 80; 2001 a.2.

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

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

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

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court does not have jurisdiction over a fetus under this section. State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112,561 N.W.2d 729 (1997).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by sub. (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, ___ Wis. 2d ___, 643 N.W.2d 890.

48.135 Referral of children and expectant mothers of unborn children to proceedings under chapter 51 or 55.

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

(2) Except as provided in ss. 48.19 to 48.21 and s. 48.345 (14), any voluntary or involuntary admissions, placements or commitments of a child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51 or 55. Except as provided in ss. 48.193 to 48.213 and s. 48.347 (6), any voluntary or involuntary admissions, placements or commitments of an adult expectant mother of an unborn child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51.

History: 1977 c. 354; 1977 c. 418 s. 928 (55) (c); 1977 c. 428 s. 6; 1979 c. 300; 1987 a. 339; 1995 a. 77; 1997 a. 292.

48.295 Physical, psychological, mental or developmental examination. (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court or of an expectant mother whose ability to control her use of alcohol beverages, controlled substances or controlled substance analogs is at issue before the court. The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the request for such an examination or assessment before ordering the examination or assessment. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

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

(1g) If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days after the court order, report the results of the assessment to the court, except that, upon request by the approved treatment facility and if the child is not an expectant mother under s. 48.133 and is not held in secure or non-secure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child or expectant mother is in need of treatment for abuse of alcohol beverages, controlled substances or controlled substance analogs or education relating to the use of alcohol beverages, controlled substances and controlled substance analogs and, if so, shall recommend a service plan and an appropriate treatment, from an approved treatment facility, or a court–approved education program.

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

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

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

History: 1977 c. 354; 1979 c. 300; 1985 a. 321; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 339; 1993 a. 474; 1995 a. 71,225,448; 1997 a. 27,292; 1999 a. 149.

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

48.31 Fact–finding hearing. (1) In this section, "fact–finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate parental rights are proved by clear and convincing evidence.

(2) The hearing shall be to the court unless the child, the child's parent, guardian, or legal custodian, the unborn child by the unbom child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim or witness, as defined in s. 950.02, the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts, except that in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection or services that can be ordered by the court. If the court finds that the child or unborn child is not within the jurisdiction of the court or, in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, that the child or unborn child is not in need of protection or services that can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

(4) The court or jury shall make findings of fact and the court shall make conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133 or 48.42, except that the court shall make findings of fact relating to whether the child or unborn child is in need of protection or services which can be ordered by the court. In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court may not find that the child is suffering emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross-examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child to be in need of protection or services under s. 48.13 (11m) or an unborn child to be in need of protection or services under s. 48.133, the court may

not find that the child or the expectant mother of the unbom child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects unless an assessment for alcohol and other drug abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted by an approved treatment facility.

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

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

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 17, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105.

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

A fact–finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. In Interest of C.M.L. 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by s. 48.13 (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, ___ Wis. 2d ___, 643 N.W.2d 890.

SUBCHAPTER VI
DISPOSITION

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

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

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

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

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

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

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

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

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

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

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

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

1. Protecting minors against their own immaturity.

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

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

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

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

1. Grandparent.
2. Aunt.
3. Uncle.
4. Sister.
5. Brother.

(c) "Counselor" means a physician including a physician specializing in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained member of the clergy. "Counselor" does not include any person who is employed by or otherwise affiliated with a reproductive health care facility, a family planning clinic or a family planning agency; any person affiliated with the performance of abortions, except abortions performed to save the life of the mother; or any person who may profit from giving advice to seek an abortion.

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

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

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

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

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

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

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

1. The person or the person's agent has, either directly or through a referring physician or his or her agent, received and made part of the minor's medical record, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed written consent of one of

her parents; or of the minor's guardian or legal custodian, if one has been appointed; or of an adult family member of the minor; or of one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor.

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

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

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

Ig. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of **s.** 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record and report the sexual intercourse as required under s. 48.981 (2) or (2m) (e). Any minor who makes a false statement under this subdivision, which the minor does not believe is true, is subject to a proceeding under s. 938.I2 or 938.13 (1 2), whichever is applicable, based on a violation of **s.** 946.32 (2).

lm. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under **s.** 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, for consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

lm. Except as provided under **s.** 48.315 (1) (b), (c), (f), and (h), if the court fails to comply with the time limits specified under subd.1. without the prior consent of the minor and the minor's

counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, the minor and the minor's counsel, if any, or the member of the clergy, if any, shall select a temporary reserve judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order granting or denying the petition and the chief judge of the judicial administrative district in which the court is located shall assign the temporary reserve judge selected by the minor and the minor's counsel, if any, or the member of the clergy, if any, to make the determination and issue the order. A temporary reserve judge assigned under this subdivision to make a determination under par. (c) and issue an order granting or denying a petition shall make the determination and issue the order within 2 calendar days after the assignment, unless the minor and her counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of that time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition, and shall notify the minor of the court's order, as provided under subd. 1.

2. Counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall immediately, upon notification under subd. 1. or 1m. that the court has granted or denied the petition, notify the minor. If the court has granted the petition, counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the court order to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this subdivision shall place the copy in the minor's medical record.

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

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

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

History: 1991 a. 263,315; 1993 a. 112,230,446; 1995 a. 77,275,309; 2001 a. 16, 103.

The essential holding of ***Roe v. Wade*** allowing abortion is upheld, but various **state** restrictions on abortion are permissible. Planned Parenthood v. Casey, 505 **U.S.** 833, 120 **L.** Ed. 2d 674 (1992).

SUBCHAPTER VII
PERMANENCY PLANNING; RECORDS

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) or (5) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or adult expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. **A** public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. **A** law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). **A** social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

(1b) If requested by the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report, or if requested by the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or child a copy of that report. If requested by the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, if requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, or if requested by an unborn child through the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem a copy of that report.

(1d) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report or upon the written permission of the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or child in the written permission. 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 a law enforcement officer's report, or of an expectant mother of an unbom child who is the subject of a law enforcement officer's report, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission.

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under this section or s. 48.375 (7) (e).

(ag) Upon request of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon request of the child, if 14 years of age or over, the court shall open for inspection by the parent, guardian, legal custodian or child the records of the court relating to that child, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian or child would result in imminent danger to anyone.

(aj) Upon request of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), upon request of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon request of an unborn child by the unborn child's guardian ad litem, the court

shall open for inspection by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem the records of the court relating to that expectant mother, unless the court finds, after due notice and hearing, that inspection of those records 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) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon the written permission of the child, if 14 years of age or over, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or child in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(ap) 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 a record of a court specified in par. (a), or of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, and of the unbom child by the unborn child's guardian ad litem, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) Upon request of the department or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department or federal agency.

(dm) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under **ss.** 767.45 to 767.60, the party's attorney or the guardian ad litem for the child who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child for the purpose of determining the paternity of the child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41 (1), the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by the requester its records relating to the paternity of the child or disclose to the requester those records.

(dr) Upon request of the department of corrections or any other person preparing a pre-sentence investigation under s. 972.15 to review court records for the purpose of preparing the pre-sentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(f) Upon request of the department of corrections to review court records for the purpose of obtaining information concerning a child required to register under s. 301.45, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any child who has been found in need of protection or services for an offense specified in s. 301.45 (1g) (a). The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(g) Upon request of any other court assigned to exercise jurisdiction under this chapter and ch. 938, a district attorney or corporation counsel to review court records for the purpose of any proceeding in that other court, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(h) Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a child, the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by an authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(5) (a) Any person who is denied access to a record under Sub.(1), (Ib) or (Id) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.

2. The reason the information is being sought.

3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought ***to*** the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) The court shall notify the child, the child's counsel, the child's parents, appropriate law enforcement agencies and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem and appropriate law enforcement agencies, in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(c) The court shall make an inspection, which may be in camera, of the records of the child or expectant mother. If the court determines that the information sought **is** for good cause and that it cannot be obtained with reasonable effort from other sources, the court shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making that determination, the court shall balance the interest of the petitioner in obtaining access to the record against the interest of the child or expectant mother in avoiding the stigma that might result from disclosure.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the records of the child or expectant mother. **All** records related to a decision under this subsection are confidential.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180.403:, 1989 a. 31. 107, 145; 1991 a. 39. 263: 1993 a. 98, 195, 228. 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352; 440, 448; 1997 a. 35, 80, 191,205,252,292; 1999 a. 32, 89.

In the interest of fostering fair and efficient administration of justice, a circuit court has the power to order disclosure of police records. State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 Wis. 2d 435, 267 N.W.2d 309 (1978).

Section 967.06 gives the public defender the right to receive juvenile records of indigent clients notwithstanding s. 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 329 N.W.2d 275 (Ct. App. 1982).

In determining whether to release juvenile court records, the child's best interests are paramount. The child's interests must be weighed against the need of the party seeking the information. The child whose confidentiality interests are at stake must be represented. State v. Bellows, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998).

Juvenile officers are not required to provide information concerning juveniles to school officials. **A** school does not violate sub. (1) by using information obtained from an officer to take disciplinary actions against a student as long **as** the school does not reveal the reason **for** its action. 69 Atty. Gen. 179.

A sheriffs department may, when evaluating an individual **for** an employment position, consider information in its possession concerning the individual's juvenile record. 67 Atty. Gen. 327 is overruled. 79 Atty. Gen. 89.

SUBCHAPTER XX
MISCELLANEOUS PROVISIONS

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, great-grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.

2. The child's guardian.

3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. An 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 exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd. 1.

(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 other 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 unbom child who, when bom, 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, great-grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step-grandparent, stepbrother, stepsister, half brother, half sister, brother–in–law, sister–in–law, step-uncle, or step-aunt.

(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 unbom 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 unbom 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 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.

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 professional 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 (1) (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 (Im),] 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 unborn 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. 441.0G (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 permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) REPORTS; INVESTIGATION. (a) ***Referral of report.*** 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 (f), 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 8. 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 (f), 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 be 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 determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an 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 (1) (cm) or 48.193 (1) (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 unbom child is in need of services, the county department, department or licensed child welfare 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 welfare agency may request that a petition he 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 unbom child. The agency 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 welfare 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 determination, 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 welfare 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 unbom 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 unbom 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 unbom 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 welfare 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 welfare 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 department 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 unbom 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 report initially is a hospital, to the hospital.

(6) PENALTY. Whoever intentionally violates this section by failure to report as required may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(7) CONFIDENTIALITY. (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by 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 information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child 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 (1Om) 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 report 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.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unbom 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. 48.07 (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 (bm) 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 report 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 information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) 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 performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated 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 information 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 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.

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.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, 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 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 unbom child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unbom 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 ahuse 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, 272,318, 395,443,446,491; 1995 a. 275,289, 369,456; 1997 a. 27, 114, 292, 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 he 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. Behnke, 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 staff members may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on–site interviews 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 administrator may he granted access to child abuse and neglect files under s. 48.981 if access is necessary for the perfomiance of their statutory duties. 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Atty. Gen. 66.

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 reauires that the court undertake an in camera insnection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

This section does not authorize a private cause of action for failure to report. Isley v. Capucian Province, 880 F. Supp. 1138 (1995).

CHAPTER 51

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

51.001 Legislative policy.
51.01 Definitions.
51.02 Council on mental health.
51.03 Department; powers and duties.
51.032 Denial and revocations of certification or approval based on tax delinquency.
51.038 Outpatient mental health clinic certification.
51.04 Treatment facility certification.
51.05 Mental health institutes.
51.06 Centers for the developmentally disabled.
51.07 Outpatient services.
51.08 Milwaukee County Mental Health Complex.
51.09 County hospitals.
51.10 Voluntary admission of adults.
51.13 Admission of minors.
51.14 Outpatient treatment of minors.
51.15 Emergency detention.
51.20 Involuntary commitment for treatment.
51.22 Care and custody of persons.
51.30 Records.
51.35 Transfers and discharges.
51.37 Criminal commitments: mental health institutes.
51.375 Honesty testing of sex offenders.
51.38 Nonresident patients on unauthorized absence.
51.39 Resident patients on unauthorized absence.
51.40 Residence of developmentally disabled or chronically mentally ill adults.
51.42 Community mental health, developmental disabilities, alcoholism and drug abuse services.
51.421 Community support programs.
51.423 Grants in-aid.
51.437 Developmental disabilities services.
51.44 Early intervention services.
51.45 Prevention and control of alcoholism.
51.46 Priority for pregnant women for private treatment for alcohol or other drug abuse.
51.47 Alcohol and other drug abuse treatment for minors without parental consent.
51.48 Alcohol and other drug testing, assessment, and treatment of minor without minor's consent.
51.59 Incompetency not implied.
51.61 Patients rights.
51.62 Protection and advocacy system.
51.63 Private pay for patients.
51.64 Reports of death required penalty; assessment.
51.65 Segregation of tuberculosis patients.
51.67 Alternate procedure; protective services.
51.75 Interstate compact on mental health.
51.76 Compact administrator.
51.77 Transfer of patients.
51.78 Supplementary agreements.
51.79 Transmittal of copies.
51.80 Patients' rights.
51.81 Uniform extradition of persons of unsound mind act: definitions.
51.82 Delivery of certain nonresidents.
51.83 Authentication of demand; discharge: costs.
51.84 Limitation of time to commence proceeding.
51.85 Interpretation.
51.87 Interstate contracts for services under this chapter.
51.90 Antidiscrimination.
51.91 Supplemental aid.
51.95 Short title.

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 developmental 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 dcpcndcnt, mentally ill or developmentally disabled persons.

(29) (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 are 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.

(bj "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 mcntal illness.

(4) "Conditional transfcr" means a transfer of a patient or rcsident to a less rcstrictivc environment for trcatmcnt which is made subject to conditions imposed for the benefit of the patient or rcsident.

(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 trcatmcnt for mcntal 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) "Trcatment dircctor" 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 othcr 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. (Ig) 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 othcr 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 dccrcase 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.

(Ir) 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 information 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. I. 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 infomation 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 othcr 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 servicc 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 othcr 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;** 1989 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 (8).

(Im) 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 rcccived under sub. (I) 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. (I) if the applicant does not provide the information 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 a. 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 department 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 recipicnt undcr 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 undcr 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. 224; 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 hcalth institute any resident person, except in an emergency, 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 institute. 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 dcpartmcnt 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 dcpartmcnt complies with sub. (3g). The dcpartmcnt 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 institutes 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 undcr 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. 428; 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 366; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 27, 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 arc 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 statutcs, and by the terms of the contract between the department, except that, in the cvcnt 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 (18), 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 OR 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.

(bj Offer prccommitment 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 bc 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. 350 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 (1); 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 treatment 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 (1).

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 under 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.

(bj 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 rcqucst 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 be 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 he 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 (1). 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 parcnt, 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 fonn as soon as possible after the uatient reauests release.

History: 1975 c. **430;** 1977 c. 354, 428, 447; 1979 c. 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.

(e) 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 parcnt 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 bc served upon the parent or guardian at his or her last–known 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.

(dj **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), (bj, or (cj. 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.

(ej 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 bc 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 trcatnient 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 trcatment 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 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.

(bj 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 treatment 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.

(dj 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) (dj if a hearing is held.

(bj **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).

(cj **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.

(ej 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.

(c) **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 thcrc 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) or 938.19 (1) (c).

(i) Approval of an admission 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 case of a minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treahnent 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. 328; 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, "outpatient 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 trcatmcnt 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 treatment 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.

(e) The mental health review officer shall notify the county department under s. 51.42 or 51.437 of the contents of any petition received by the mental health review officer under this subsection. The county department under **s.** 51.42 or 51.437 may, following review 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 review officer determines that the best interests of the minor would be served, a petition 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 health 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 outpatient 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 rcvicw 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 unreprcscntcd, 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 bc 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. (a) 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 cvidcnce 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 impainncnt 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 treatment facility, docs 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 treatment are permitted under **sub.** (8), 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 belief under 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 dcsignatc 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 wlicreby 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 dctcntion for all rcasonablc 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 bc 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 detention the individual shall be 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 evidences or does 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 cmcrgency dctcntion 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 bc 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 (1l). 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 fo 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 exercising 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 (11j or 938.13 (4). The subject individual's status as a minor docs 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 manifcstcd 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 dcpendcnt 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 treatment 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 care or treatment in the community under this subd. 2. e. The individual's status as a minor does 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. c., 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. orb., 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 subjcct 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 cominencemcnt 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 a pattern 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 infonned 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 trcatmcnt 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 docs 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 subjcct 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 chiefjudge 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

detemiine 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 bc committed undcr 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 thcsc documents on the subjcct 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 noticc 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 noticc 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 officer 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 arrival at the detention facility by the facility staff, who shall also serve all documents required 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) **(9,** 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 required 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 subjcct 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 undcr chs. 48 and 938.

(7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition undcr 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 undcr 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 belicvc 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 (11) (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 belicvc that the allegations under s. 880.07 (1m) (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 whcthcr 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 wcrc 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 treatment 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 treatment 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 treatment 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 trcatmcnt 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 settlement agreement approved by the court under par. (bg), the counsel designated under sub. (4) may fife 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 subject 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 subject individual. The examiners may not be related 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 sclcctcd by the subject individual ifthc subjcct 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 hc 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 examiners 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 bc 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 appropriatcncss of various treatment modalities or facilities. If the examiners are unable to make conclusions to a reasonable degree of medical or professional certainty, the examiners 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 presence 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 treatment 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 rccommcndation and is not subjcct to approval or disapproval by the court. Failure to furnish a treatment plan under this paragraph does 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 detennine 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 bc 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 closed. If the hearing 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 detennine 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 inmatc 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. (I) (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 southem 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 hack 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 inmatc 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) Im. 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 determines, after a hearing on a motion made by the individual, that the individual is not required to comply under s. 301.45 (1m).

3. In determining under subd. lm. 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 presented 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 devclops 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 designee 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 treatmcnt 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. (f). 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 mcmbcr 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.

(15) 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.

(16) 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 own 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.

(e) 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 detennines, 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 he 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 receive 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 ate paid, as provided in s. 59.64 (1). Payment of attorney fees for appointed attorneys in the case of children and indigents shall be 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 rcimburscment 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).

1m. 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; 1983 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; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 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 the 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 be 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. Memmel 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 mandatory and refers to calendar days, not business days. State ex rel. Lockman v. Gerhardstein, 107 Wis. 2d 325, 320 N.W.2d 27 (Ct. App. 1982).

Criminal and civil commitments are not substantially the same. State v. Smith, 113 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 the 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 treatment 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. 151 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 be paid for by the county. State 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 request 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 Mental 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 the 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 arrives at the facility," rather than the next day. The "exclude–the–first–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 be involuntarily committed upon a finding of mere mental or emotional harm, 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. Gen. 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. 418 (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 departments 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.

(b) "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 are 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 be 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 TO COURT RECORDS. (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 information that it obtains under this paragraph as provided under s. 301.46.

(4) ACCESS TO REGISTRATION AND TREATMENT RECORDS. (a) *Confidentiality of records.* Except as otherwise 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).

(b) *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 information.

3. For purposes of research as permitted in s. 51.61 (1) (j) 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 information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individual whose treatment 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 treatment, 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 information.

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. Release 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 treatment 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 treatment records are maintained by an agency with jurisdiction, as defined in s. 980.015 (1), 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 are 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 transferred under 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, birthdate, 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 treatment 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 are 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 by reason of mental disease or defect, a defendant lost the physician–patient privilege by virtue of s. 905.04 (4) (c) and 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) (b) is allowable when access fits within or is comparable to one of the exceptions for treatment records under sub. (4) (b) or when a significant interrelationship exists between the records of the civil commitment proceeding 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 inconsistent 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 transfer 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 treatment, 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 treatment 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 transfer 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 court.

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 nature 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 need 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 immediately notify the minor's parent or guardian. The minor shall be returned 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 necessity for appointment of a guardian or limited guardian. The department 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. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 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 under 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) 1. 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 harm 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) 1. 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 interests 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 be 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 treatment 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 department 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 does 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 under 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 services 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 intent.

(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) *Duties.* 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 (1q) 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. 1m., 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 BOARD. (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 executive 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 COUNTY 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 (1).

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 COUNTY 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 community 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 A 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 inconsistent 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.

(m) 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 board 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. 46.18 (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) (e) 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 department 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 uniform 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 administration 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, 1656 (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 chs. HFS 34, 40, 61, 63, 65, and 75, Wis. adm. code.

Costs could not be 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 boards as well as to the county board. 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 but 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 board 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 board." 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 assessment, 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 funding 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 under 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 required 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 under 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. 46.215, 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 funds 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 department 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 released 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. 27, 186; 1989 a. 31, 56, 122; 1991 a. 39, 269; 1993 a. 16, 445; 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.

(4g) COUNTY DEPARTMENT OF DEVELOPMENTAL 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 out–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. 46.031 (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. 51.87

(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 services, 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 developmental disabilities services 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 services 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 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. 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 be 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 services 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 (1m) (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 DEVELOPMENTAL 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 department 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 developmental 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

shall be filled for the residue of the unexpired term in the manner that original appointments are made.

(9) POWERS AND DUTIES OF COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD IN CERTAIN COUNTIES. A county developmental disabilities services board appointed under sub. (7) (a) 1. shall do all of the following:

(a) Appoint a county developmental disabilities services director, subject to the approval of each county board of supervisors which participated in the appointment of the county developmental disabilities services board, establish salaries and personnel policies for the county department of developmental disabilities services subject to the approval of each such county board of supervisors and arrange and promote local financial support for the program. Each 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 may delegate such appointing authority to the county developmental disabilities services board.

(am) 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 developmentally disabled individuals based upon the services designated under sub. (1). 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.

(b) Assist in arranging cooperative working agreements with other health, educational, vocational and welfare services, public or private, and with other related agencies.

(d) Comply with the state requirements for the program.

(e) Appoint committees consisting of residents of the county to advise the county developmental disabilities services board as it deems necessary.

(f) Develop county developmental disabilities services board operating procedures.

(g) Determine, subject to the approval of 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 and with the advice of the county developmental disabilities services director appointed under par. (a), whether services are to be provided directly by the county department of developmental disabilities services or contracted for with other providers and make such contracts. 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 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 developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services.

(h) Assume the powers and duties of the county department of developmental disabilities services under subs. (4m) and (4r).

(i) 1. Annually identify brain–injured persons in need of services within the county.

2. Annually, no later than January 30, report to the department the age and location of those brain–injured persons who are receiving treatment.

(9b) POWERS AND DUTIES OF COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR A COUNTY ADMINISTRATOR. The county developmental disabilities services board appointed under sub. (7) (a) 2. shall:

(a) Appoint committees consisting of residents of the county to advise the board as it deems necessary.

(am) Prepare a local plan which includes an inventory of all existing resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1).

(b) Recommend program priorities, identify unmet service needs and prepare short–term and long–term plans and budgets for meeting such priorities and needs.

(c) Prepare, with the assistance of the county developmental disabilities director appointed under sub. (10m), 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 under s. 46.031 (1) for authorized services.

(d) Advise the county developmental disabilities services director appointed under sub. (10m) 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.

(e) Develop county developmental disabilities services board operating procedures.

(f) Comply with state requirements.

(g) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(h) Advise the county developmental disabilities services director regarding coordination of local services and continuity of care.

(10) COUNTY DEVELOPMENTAL DISABILITIES SERVICES DIRECTOR IN CERTAIN COUNTIES. The county developmental disabilities services director appointed under sub. (9) (a) shall:

(am) Operate, maintain and improve the county department of developmental disabilities services.

(ar) With the county developmental disabilities services board under sub. (9), prepare:

1. Annual proposed and final budgets of all funds necessary for the program and services authorized by this section.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department of health and family services and 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.

(b) Make recommendations to the county developmental disabilities services board under sub. (9) for:

1. Personnel and salaries.

2. Changes in the program and services.

(c) Evaluate service delivery.

(d) After consultation with the county developmental disabilities services board administer the duties of the county department of disabilities services under sub. (4r) (a) 2.

(e) Comply with state requirements.

(10m) COUNTY DEVELOPMENTAL DISABILITIES SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or a county administrator in which the county board of supervisors has established a single–county department of developmental disabilities services, the county executive or county administrator shall appoint and supervise the county developmental disabilities services 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 developmental disabilities services director. The appointment 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 developmental disabilities services director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program established 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 developmental disabilities services board under sub. (9b) (e), whether services are to be provided directly by the county department of developmental disabilities services 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 developmental disabilities services board under sub. (9b) in the preparation of the budgets required under sub. (9b) (c).

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county developmental disabilities services board under sub. (9b) (c).

(g) Evaluate service delivery.

(h) After consultation with the county developmental disabilities services board administer the duties of the county department of disabilities services under sub. (4r) (a) 2.

(i) Establish salaries and personnel policies of the program subject to approval of the county executive or county administrator and county board of supervisors.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

(L) Assist in arranging cooperative working agreements with other persons providing health, education, vocational or welfare services related to services provided under this section.

(m) Arrange and promote local financial support for the program.

(n) In consultation with the county developmental disabilities services board, prepare:

1. Intermediate–range plans and budget.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department of health and family services and the county board of supervisors.

(o) 1. Annually identify brain–injured persons in need of services within the county.

2. Annually, no later than January 30, 1987, and January 30 of each year thereafter, report to the department the age and location of those brain–injured persons who are receiving treatment.

(14) DUTIES OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICES. The department of health and family services shall:

(a) Review requests and certify county departments of developmental disabilities services to assure that the county departments of developmental disabilities services are in compliance with this section.

(c) Periodically review and evaluate the program of each county department of developmental disabilities services.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

(g) Ensure that any county department of developmental disabilities services which elects to provide special education programs to children aged 3 years and under complies with requirements established by the department of public instruction.

(h) Organize and foster education and training programs for all persons engaged in treatment of brain–injured persons and keep a central record of the age and location of those persons treated.

(14m) DUTIES OF THE SECRETARY. The secretary shall:

(a) Maintain a listing of present or potential resources for serving the needs of the developmentally disabled, including private and public persons, associations and agencies.

(b) Collect factual information concerning the problems.

(c) Provide information, advice and assistance to communities and try to coordinate their activities on behalf of the developmentally disabled.

(d) Assist counties in obtaining professional services on a shared–time basis.

(e) Establish and maintain liaison with all state and local agencies to establish a continuum of services, consultative and informational.

(14r) DUTIES OF THE COUNCIL ON DEVELOPMENTAL DISABILITIES. (a) The council on developmental disabilities shall:

1. Designate appropriate state or local agencies for the administration of programs and fiscal resources made available to the council on developmental disabilities under federal legislation affecting the delivery of services to the developmentally disabled.

2. Perform the following responsibilities related to the state plan, for the delivery of services, that is required under 42 USC 6022, including the construction of facilities:

a. Develop, approve, and continue modification of the statewide plan.

b. Monitor and evaluate the implementation of the statewide plan.

3. Review and advise the department of health and family services on community budgets and community plans for programs affecting persons with developmental disabilities.

4. Participate in the development of, review, comment on, and monitor all state plans in the state which relate to programs affecting persons with developmental disabilities.

5. Serve as an advocate for persons with developmental disabilities.

6. Provide continuing counsel to the governor and the legislature.

7. Notify the governor regarding membership requirements of the council and if vacancies on the council remain unfilled for a significant period of time.

(b) The council may establish such reasonable procedures as are essential to the conduct of the affairs of the council.

(c) The council on developmental disabilities may or, if requested by the governor, shall coordinate recommendations of the council and the public to the governor regarding council membership.

(15) CONSTRUCTION. (a) Nothing in this section shall be construed to mean that developmentally disabled persons are not eligible for services available from all sources.

(b) Nothing in this section may be deemed to require a county department of developmental disabilities services to provide education, recreation, counseling, information or referral services to any individual with a developmental disability or to his or her family.

(c) 1. Any reference in any law to a county department of developmental disabilities services applies to the county department under s. 46.23 in its administration of the powers and duties of the county department of developmental disabilities services under s. 46.23 (3) (b), if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1. Any reference in any law to a county department of developmental disabilities services applies to a county department under s. 46.21 (2m) in its administration of the powers and

duties of the county department of developmental disabilities services under s. 46.21 (2m) (b) 1. a.

2. a. Any reference in any law to a county developmental disabilities services director appointed under sub. (9) (a) 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 developmental disabilities services director, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

b. Any reference in any law to a county developmental disabilities services director appointed under sub. (10m) (intro.) applies to the director of a county department appointed under s. 46.23 (6m) (intro.), if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1. Any reference in any law to a county developmental disabilities services director appointed under sub. (10m) (intro.) applies to the director of a county department appointed under s. 46.21 (1m) (a) in his or her administration of the powers and duties of that county developmental disabilities services director.

3. a. Any reference in any law to a county developmental disabilities services board appointed under sub. (7) (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 developmental disabilities services board, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

b. Except as provided in subd. 3. c., any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 2. applies to the board of a county department appointed under s. 46.23 (4) (b) 2. in its administration of the powers and duties of that county developmental disabilities services board, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

c. Any reference in any law to a county developmental disabilities services board appointed under sub. (7) (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 developmental services board as specified in sub. (9b).

(16) ADMINISTRATIVE STRUCTURE. Rules promulgated by the secretary under s. 51.42 (7) (b) shall apply to services provided through county departments of developmental disabilities services under this section.

History: 1971 c. 307, 322; 1973 c. 90, 333; 1975 c. 39, 199, 430; 1977 c. 26 ss. 39, 75; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1977 c. 428 s. 85, 86, 115; 1979 c. 32, 117, 221, 330, 355; 1981 c. 20, 93, 329; 1983 a. 27, 365, 375, 524; 1985 a. 29 ss. 1094 to 1105m, 3200 (56) (a); 1985 a. 120, 176, 307, 332; 1987 a. 27; 1989 a. 31, 56, 107, 262; 1991 a. 39, 274, 315; 1993 a. 16, 83; 1995 a. 27 ss. 3266m, 9116 (5), 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 225, 352, 417; 1997 a. 27, 35, 164, 252; 1999 a. 9; 2001 a. 16, 59.

Cross Reference: See also chs. HFS 61 and 65, Wis. adm. code.

The corporation counsel should provide legal advice and representation to 51.42 and 51.437 boards as well as to the county board. 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, but 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 board that he or she is unable to provide specific services in a timely manner. 73 Atty. Gen. 8.

51.44 Early intervention services. (1) In this section:

(ag) "Case management services" means activities carried out by a service coordinator to assist and enable a child eligible for early intervention services under this section and the child's family to receive the rights and services authorized to be provided under the early intervention program under this section.

(ar) "Individualized family service plan" means a written plan for providing early intervention services to an eligible child and the child's family.

(b) "Local health department" has the meaning given in s. 250.01 (4).

(c) "Multidisciplinary evaluation" means the process used by qualified professionals to determine eligibility for early intervention services under this section based on the child's developmental status, the child's health, physical condition and mental condition or the child's atypical development.

(1m) The department is the lead agency in this state for the development and implementation of a statewide system of coordinated, comprehensive multidisciplinary programs to provide appropriate early intervention services under the requirements of 20 USC 1476.

(3) (a) From the appropriations under s. 20.435 (7) (bt) and (nL) the department shall allocate and distribute funds to counties to provide or contract for the provision of early intervention services to individuals eligible to receive the early intervention services.

(b) Funds that are distributed to counties under par. (a) may not be used to supplant funding from any other source.

(c) No county may contribute less funding for early intervention services under this section than the county contributed for early intervention services in 1999, except that, for a county that demonstrated extraordinary effort in 1999, the department may waive this requirement and establish with the county a lesser required contribution.

(4) Each county board of supervisors shall designate the appropriate county department under s. 46.21, 46.23 or 51.437, the local health department of the county or another entity as the local lead agency to provide early intervention services under the funding specified in sub. (3).

(5) The department shall do all of the following:

(a) Promulgate rules for the statewide implementation of the program under this section that do all of the following:

1. Specify the population of children who would be eligible for services under the program.

2. Define the term "early intervention services".

3. Establish personnel standards and a comprehensive plan for the development of personnel providing services in the program.

4. Establish procedures for the resolution of complaints by clients in the program.

5. Specify data collection requirements, including a system for making referrals to service providers.

6. Establish monitoring and supervision authority.

7. Establish policies and procedures for the implementation of individual family services plans and case management services.

8. Develop requirements for local coordination and interagency agreements at state and local levels.

9. Establish requirements for public awareness activities and a statewide directory of services.

(am) Promulgate rules that define the term "service coordinator".

(b) Ensure that the children eligible for early intervention services under this section receive all of the following services:

1. A multidisciplinary evaluation.

2. An individualized family service plan.

3. Assignment of a service coordinator, as defined by the department by rule, to provide case management services.

(c) Annually, submit to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) a report on the department's progress toward full implementation of

the program under this section, including the progress of counties in implementing goals for participation in 5th–year requirements under 20 USC 1476.

History: 1991 a. 39, 269; 1993 a. 16, 27; 1995 a. 27; 1997 a. 27; 2001 a. 16.
Cross Reference: See also ch. HFS 90, Wis. adm. code.

51.45 Prevention and control of alcoholism. (1) DECLARATION OF POLICY. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

(2) DEFINITIONS. As used in this section, unless the context otherwise requires:

(b) "Approved private treatment facility" means a private agency meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(c) "Approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this section through a contract with the department under sub. (7) (g) or with the county department under s. 51.42 (3) (ar) 2., and meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(cm) "County department" means a county department under s. 51.42.

(cr) "Designated person" means a person who performs, in part, the protective custody functions of a law enforcement officer under sub. (11), operates under an agreement between a county department and an appropriate law enforcement agency under sub. (11), and whose qualifications are established by the county department.

(d) "Incapacitated by alcohol" means that a person, as a result of the use of or withdrawal from alcohol, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm or threats of harm to himself or herself or to any other person, or to property.

(e) "Incompetent person" means a person who has been adjudged incompetent by the circuit court.

(f) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(g) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, surgical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons, and psychiatric, psychological and social service care which may be extended to their families. Treatment may also include, but shall not be replaced by, physical detention of persons, in an approved treatment facility, who are involuntarily committed or detained under sub. (12) or (13).

(2m) APPLICABILITY TO MINORS. (a) Except as otherwise stated in this section, this section shall apply equally to minors and adults.

(b) Subject to the limitations specified in s. 51.47, a minor may consent to treatment under this section.

(c) In proceedings for the commitment of a minor under sub. (12) or (13):

1. The court may appoint a guardian ad litem for the minor; and

2. The parents or guardian of the minor, if known, shall receive notice of all proceedings.

(3) POWERS OF DEPARTMENT. To implement this section, the department may:

(a) Plan, establish and maintain treatment programs as necessary or desirable.

(b) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons.

(c) Keep records and engage in research and the gathering of relevant statistics.

(d) Provide information and referral services as optional elements of the comprehensive program it develops under sub. (7).

(4) DUTIES OF DEPARTMENT. The department shall:

(a) Develop, encourage and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes.

(b) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons.

(c) Assure that the county department provides treatment for alcoholics and intoxicated persons in county, town and municipal institutions for the detention and incarceration of persons charged with or convicted of a violation of a state law or a county, town or municipal ordinance.

(d) Cooperate with the department of public instruction, local boards of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education.

(e) Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of alcohol.

(f) Develop and implement and assure that county departments develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol.

(g) Organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons.

(h) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism.

(i) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

(j) Advise the governor or the state health planning and development agency under P.L. 93–641, as amended, in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan.

(k) Review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation, and advise the governor or the state health planning and development agency under P.L. 93–641, as amended, on provisions to be included relating to alcoholics and intoxicated persons.

(L) Develop and maintain, in cooperation with other state agencies, local governments and businesses and industries in the state, appropriate prevention, treatment and rehabilitation programs and services for alcohol abuse and alcoholism among employees thereof.

(m) Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment.

(n) Cooperate with the department of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

(o) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment.

(p) Submit to the governor or the state health planning and development agency under P.L. 93–641, as amended, an annual report covering the activities of the department relating to treatment of alcoholism.

(q) Gather information relating to all federal programs concerning alcoholism, whether or not subject to approval by the department, to assure coordination and avoid duplication of efforts.

(7) COMPREHENSIVE PROGRAM FOR TREATMENT. (a) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(b) The program of the department shall include:

1. Emergency medical treatment provided by a facility affiliated with or part of the medical service of a general hospital.

2. Nonmedical emergency treatment provided by a facility having a written agreement with a general hospital for the provision of emergency medical treatment to patients as may be necessary.

3. Inpatient treatment.

4. Intermediate treatment as a part–time resident of a treatment facility.

5. Outpatient and follow–up treatment.

6. Extended care in a sheltered living environment with minimal staffing providing a program emphasizing at least one of the following elements: the development of self–care, social and recreational skills or prevocational or vocational training.

7. Prevention and intervention services.

(c) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under subs. (10) to (13). Treatment may not be provided at a correctional institution except for inmates.

(d) The superintendent of each facility shall make an annual report of its activities to the secretary in the form and manner the secretary specifies.

(e) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(f) The secretary shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(g) The department may contract for the use of any facility as an approved public treatment facility if the secretary considers this to be an effective and economical course to follow.

(8) STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES. (a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, except as provided in s. 51.032, and fix the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards, the department shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall prevent county departments from establishing reasonable higher standards.

(b) The department periodically shall make unannounced inspections of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(c) Approval of a facility must be secured under this section before application for a grant–in–aid for such facility under s. 51.423 or before treatment in any facility is rendered to patients.

(d) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules and information the department reasonably requires, including any data or information specified under s. 46.973 (2m). An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(e) The department, after notice and hearing, may under this subsection suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(f) The circuit court may restrain any violation of this section, review any denial, restriction or revocation of approval under this subsection, and grant other relief required to enforce its provisions.

(9) ACCEPTANCE FOR TREATMENT; RULES. The secretary shall promulgate rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In promulgating the rules the secretary shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless the patient is found to require inpatient treatment.

(c) No person may be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

(10) VOLUNTARY TREATMENT OF ALCOHOLICS. (a) An adult alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is an incompetent person who has not been deprived of the right to contract under subch. I of ch. 880, the person or a legal guardian or other legal representative may make the application. If the proposed patient is an incompetent person who has been deprived of the right to contract under subch. I of ch. 880, a legal guardian or other legal representative may make the application.

(am) A minor may apply for voluntary treatment directly to an approved public treatment facility, but only for those forms of treatment specified in sub. (7) (b) 5. and 7. Section 51.13 shall govern voluntary admission of a minor alcoholic to an inpatient treatment facility.

(b) Subject to rules promulgated by the department, the superintendent in charge of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the superintendent, subject to rules promulgated by the department, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(c) If a patient receiving inpatient care leaves an approved public treatment facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the superintendent in charge of the treatment facility that the

patient is an alcoholic or intoxicated person who requires help, the county department shall arrange for assistance in obtaining supportive services and residential facilities. If the patient is an incompetent person the request for discharge from an inpatient facility shall be made by a legal guardian or other legal representative or by the incompetent if he or she was the original applicant.

(d) If a patient leaves an approved public treatment facility, with or against the advice of the superintendent in charge of the facility, the county department may make reasonable provisions for the patient's transportation to another facility or to his or her home or may assist the patient in obtaining temporary shelter.

(e) This subsection applies only to admissions of alcoholics whose care and treatment is to be paid for by the department or a county department.

(11) TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND OTHERS INCAPACITATED BY ALCOHOL. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. Any law enforcement officer, or designated person upon the request of a law enforcement officer, may assist a person who appears to be intoxicated in a public place and to be in need of help to his or her home, an approved treatment facility or other health facility, if such person consents to the proffered help. Section 51.13 shall govern voluntary admission of an intoxicated minor to an inpatient facility under this paragraph.

(b) A person who appears to be incapacitated by alcohol shall be placed under protective custody by a law enforcement officer. The law enforcement officer shall either bring such person to an approved public treatment facility for emergency treatment or request a designated person to bring such person to the facility for emergency treatment. If no approved public treatment facility is readily available or if, in the judgment of the law enforcement officer or designated person, the person is in need of emergency medical treatment, the law enforcement officer or designated person upon the request of the law enforcement officer shall take such person to an emergency medical facility. The law enforcement officer or designated person, in detaining such person or in taking him or her to an approved public treatment facility or emergency medical facility, is holding such person under protective custody and shall make every reasonable effort to protect the person's health and safety. In placing the person under protective custody the law enforcement officer may search such person for and seize any weapons. Placement under protective custody under this subsection is not an arrest. No entry or other record shall be made to indicate that such person has been arrested or charged with a crime. A person brought to an approved public treatment facility under this paragraph shall be deemed to be under the protective custody of the facility upon arrival.

(bm) If the person who appears to be incapacitated by alcohol under par. (b) is a minor, either a law enforcement officer or a person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take the minor into custody as provided in par. (b).

(c) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by trained staff as soon as practicable in accordance with a procedure developed by the facility in consultation with a licensed physician. The person may then be admitted as a patient or referred to another treatment facility or to an emergency medical facility, in which case the county department shall make provision for transportation. Upon arrival, the person shall be deemed to be under the protective custody of the facility to which he or she has been referred.

(d) A person who by examination pursuant to par. (c) is found to be incapacitated by alcohol at the time of admission, or to have become incapacitated at any time after admission, shall be detained at the appropriate facility for the duration of the incapacity but may not be detained when no longer incapacitated by alcohol, or if the person remains incapacitated by alcohol for more than 72 hours after admission as a patient, exclusive of Saturdays, Sundays and legal holidays, unless he or she is committed under sub. (12). A person may consent to remain in the facility as long as the physician or official in charge believes appropriate.

(e) The county department shall arrange transportation home for a person who was brought under protective custody to an approved public treatment facility or emergency medical facility and who is not admitted, if the home is within 50 miles of the facility. If the person has no home within 50 miles of the facility, the county department shall assist him or her in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the family or next of kin shall be notified as promptly as possible unless an adult patient who is not incapacitated requests that no notification be made.

(g) Any law enforcement officer, designated person or officer or employee of an approved treatment facility who acts in compliance with this section is acting in the course of official duty and is not criminally or civilly liable for false imprisonment.

(h) Prior to discharge, the patient shall be informed of the benefits of further diagnosis and appropriate voluntary treatment.

(i) No provision of this section may be deemed to require any emergency medical facility which is not an approved private or public treatment facility to provide to incapacitated persons nonmedical services including, but not limited to, shelter, transportation or protective custody.

(12) EMERGENCY COMMITMENT. (a) An intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or a person who is incapacitated by alcohol, may be committed to the county department and brought to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(b) The physician, spouse, guardian or a relative of the person sought to be committed, or any other responsible person, may petition a circuit court commissioner or the circuit court of the county in which the person sought to be committed resides or is present for commitment under this subsection. The petition shall:

1. State facts to support the need for emergency treatment;

2. State that the person is a child or state facts sufficient for a determination of indigency of the person; and

3. Be supported by one or more affidavits which aver with particularity the factual basis for the allegations contained in the petition.

(c) Upon receipt of a petition under par. (b), the circuit court commissioner or court shall:

1. Determine whether the petition and supporting affidavits sustain the grounds for commitment and dismiss the petition if the grounds for commitment are not sustained thereby. If the grounds for commitment are sustained by the petition and supporting affidavits, the court or circuit court commissioner shall issue an order temporarily committing the person to the custody of the county department pending the outcome of the preliminary hearing under sub. (13) (d).

2. Assure that the person sought to be committed is represented by counsel and, if the person claims or appears to be indigent, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, 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).

3. Issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and bring him or her to an approved public treatment facility designated by the county department, if the person is not detained under sub. (11).

4. Set a time for a preliminary hearing under sub. (13) (d), such hearing to be held not later than 48 hours after receipt of a petition under par. (b), exclusive of Saturdays, Sundays and legal holidays. If at such time the person is unable to assist in the

defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(d) Upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication under s. 51.61 (6), the exact time and place of the preliminary hearing under sub. (13) (d), and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the patient's immediate family if they can be located and may be deferred until the patient's incapacitated condition, if any, has subsided to the point where the patient is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the patient may be questioned to determine immediate medical needs. The patient may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under par. (e).

(e) When on the advice of the treatment staff the superintendent of the facility having custody of the patient determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this subsection. No person committed under this subsection shall be detained in any treatment facility beyond the time set for a preliminary hearing under par. (c) 4. If a petition for involuntary commitment under sub. (13) has been filed and a finding of probable cause for believing the patient is in need of commitment has been made under sub. (13) (d), the person may be detained until the petition has been heard and determined.

(f) A copy of the written application for commitment and all supporting affidavits shall be given to the patient at the time notice of rights is given under par. (d) by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(13) INVOLUNTARY COMMITMENT. (a) A person may be committed to the custody of the county department by the circuit court upon the petition of 3 adults, at least one of whom has personal knowledge of the conduct and condition of the person sought to be committed. A refusal to undergo treatment shall not constitute evidence of lack of judgment as to the need for treatment. The petition for commitment shall:

1. Allege that the condition of the person is such that he or she habitually lacks self–control as to the use of alcohol beverages, and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted;

2. Allege that such condition of the person is evidenced by a pattern of conduct which is dangerous to the person or to others;

3. State that the person is a child or state facts sufficient for a determination of indigency of the person;

4. Be supported by the affidavit of each petitioner who has personal knowledge which avers with particularity the factual basis for the allegations contained in the petition; and

5. Contain a statement of each petitioner who does not have personal knowledge which provides the basis for his or her belief.

(b) Upon receipt of a petition under par. (a), the court shall:

1. Determine whether the petition and supporting affidavits meet the requirements of par. (a) and dismiss the petition if the requirements of par. (a) are not met thereby. If the person has not been temporarily committed under sub. (12) (c) and the petition and supporting affidavits meet the requirements of par. (a), the court may issue an order temporarily committing the person to the custody of the county department pending the outcome of the preliminary hearing under par. (d).

2. Assure that the person is represented by counsel and, if the person claims or appears to be indigent, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, 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). The person shall be represented by counsel at the preliminary hearing under par. (d). The person may, with the approval of the court, waive his or her right to representation by counsel at the full hearing under par. (f).

3. If the court orders temporary commitment, issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and to bring the person to an approved public treatment facility designated by the county department, if the person is not detained under sub. (11) or (12).

4. Set a time for a preliminary hearing under par. (d). If the person is taken into protective custody, such hearing shall be held not later than 72 hours after the person arrives at the approved public treatment facility, exclusive of Saturdays, Sundays and legal holidays. If at that time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(c) Effective and timely notice of the preliminary hearing, together with a copy of the petition and supporting affidavits under par. (a), shall be given to the person unless he or she has been taken into custody under par. (b), the spouse or legal guardian if the person is incompetent, the person's counsel and the petitioner. The notice shall include a written statement of the person's right to an attorney, the right to trial by jury, the right to be examined by a physician, and the standard under which he or she may be committed under this section. If the person is taken into custody under par. (b), upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication under s. 51.61 (6), the exact time and place of the preliminary hearing under par. (d), the right to trial by jury, the right to be examined by a physician and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the person's immediate family if they can be located and may be deferred until the person's incapacitated condition, if any, has subsided to the point where the person is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the person may be questioned to determine immediate medical needs. The person may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under this subsection. A copy of the petition and all supporting affidavits shall be given to the person at the time notice of rights is given under this paragraph by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(d) Whenever it is desired to involuntarily commit a person, a preliminary hearing shall be held under this paragraph. The purpose of the preliminary hearing shall be to determine if there is

probable cause for believing that the allegations of the petition under par. (a) are true. The person shall be represented by counsel at the preliminary hearing and, if the person is a child or is indigent, counsel shall timely be appointed at public expense, as provided in s. 967.06 and ch. 977. Counsel shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the preliminary hearing. The person shall be present at the preliminary hearing and shall be afforded a meaningful opportunity to be heard. Upon failure to make a finding of probable cause under this paragraph, the court shall dismiss the petition and discharge the person from the custody of the county department.

(dg) The court shall proceed as if a petition were filed under s. 51.20 (1) 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. 51.20 (1).

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. 51.20 (1).

(dm) For the purposes of this section, duties to be performed by a court shall be carried out by the judge of such court or a circuit court commissioner of such court who is designated by the chief judge to so act, in all matters prior to a final hearing under this subsection.

(e) Upon a finding of probable cause under par. (d), the court shall fix a date for a full hearing to be held within 14 days. An extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause. Effective and timely notice of the full hearing, the right to counsel, the right to jury trial and the standards under which the person may be committed shall be given to the person, the immediate family other than a petitioner under par. (a) or sub. (12) (b) if they can be located, the spouse or legal guardian if the person is incompetent, the superintendent in charge of the appropriate approved public treatment facility if the person has been temporarily committed under par. (b) or sub. (12), the person's counsel, unless waived, and to the petitioner under par. (a). Counsel, or the person if counsel is waived, shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the full hearing on commitment, and shall be given the names of all persons who may testify in favor of commitment and a summary of their proposed testimony at least 96 hours before the full hearing, exclusive of Saturdays, Sundays and legal holidays.

(f) The hearing shall be open, unless the person sought to be committed or the person's attorney moves that it be closed, in which case only persons in interest, including representatives of the county department in all cases, and their attorneys and witnesses may be present. At the hearing the jury, or, if trial by jury is waived, the court, shall consider all relevant evidence, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. Ordinary rules of evidence shall apply to any such proceeding. The person whose commitment is sought shall be present and shall be given an opportunity to be examined by a court–appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the county department for a period of not more than 5 days for purposes of diagnostic examination.

(g) 1. The court shall make an order of commitment to the county department if, after hearing all relevant evidence, including the results of any diagnostic examination, the trier of fact finds all of the following:

a. That the allegations of the petition under par. (a) have been established by clear and convincing evidence.

b. That there is a relationship between the alcoholic condition and the pattern of conduct during the 12–month period immediately preceding the time of petition which is dangerous to the person or others and that this relationship has been established to a reasonable medical certainty.

c. That there is an extreme likelihood that the pattern of conduct will continue or repeat itself without the intervention of involuntary treatment or institutionalization.

2. The court may not order commitment of a person unless it is shown by clear and convincing evidence that there is no suitable alternative available for the person and that the county department is able to provide appropriate and effective treatment for the individual.

(h) A person committed under this subsection shall remain in the custody of the county department for treatment for a period set by the court, but not to exceed 90 days. During this period of commitment the county department may transfer the person from one approved public treatment facility or program to another as provided in par. (k). At the end of the period set by the court, the person shall be discharged automatically unless the county department before expiration of the period obtains a court order for recommitment upon the grounds set forth in par. (a) for a further period not to exceed 6 months. If after examination it is determined that the person is likely to inflict physical harm on himself or herself or on another, the county department shall apply for recommitment. Only one recommitment order under this paragraph is permitted.

(j) Upon the filing of a petition for recommitment under par. (h), the court shall fix a date for a recommitment hearing within 10 days, assure that the person sought to be recommitted is represented by counsel and, if the person is indigent, appoint counsel for him or her, unless waived. The provisions of par. (e) relating to notice and to access to records, names of witnesses and summaries of their testimony shall apply to recommitment hearings under this paragraph. At the recommitment hearing, the court shall proceed as provided under pars. (f) and (g).

(k) The county department shall provide for adequate and appropriate treatment of a person committed to its custody. Any person committed or recommitted to custody may be transferred by the county department from one approved public treatment facility or program to another upon the written application to the county department from the facility or program treating the person. Such application shall state the reasons why transfer to another facility or program is necessary to meet the treatment needs of the person. Notice of such transfer and the reasons therefor shall be given to the court, the person's attorney and the person's immediate family, if they can be located.

(L) If an approved private treatment facility agrees with the request of a competent patient or a parent, sibling, adult child, or guardian to accept the patient for treatment, the county department may transfer the person to the private treatment facility.

(m) A person committed under this section may at any time seek to be discharged from commitment by habeas corpus proceedings.

(n) The venue for proceedings under this subsection is the place in which the person to be committed resides or is present.

(o) All fees and expenses incurred under this section which are required to be assumed by the county shall be governed by s. 51.20 (19).

(p) A record shall be made of all proceedings held under this subsection. Transcripts shall be made available under SCR 71.04. The county department may in any case request a transcript.

(14) CONFIDENTIALITY OF RECORDS OF PATIENTS. (a) Except as otherwise provided in s. 51.30, the registration and treatment records of alcoholism treatment programs and facilities shall remain confidential and are privileged to the patient. The application of s. 51.30 is limited by any rule promulgated under s. 51.30

(4) (c) for the purpose of protecting the confidentiality of alcoholism treatment records in conformity with federal requirements.

(b) Any person who violates this subsection shall forfeit not more than $5,000.

(15) CIVIL RIGHTS AND LIBERTIES. (a) Except as provided in s. 51.61 (2), a person being treated under this section does not thereby lose any legal rights.

(b) No provisions of this section may be deemed to contradict any rules or regulations governing the conduct of any inmate of a state or county correctional institution who is being treated in an alcoholic treatment program within the institution.

(c) A private or public general hospital may not refuse admission or treatment to a person in need of medical services solely because that person is an "alcoholic", "incapacitated by alcohol" or is an "intoxicated person" as defined in sub. (2). This paragraph does not require a hospital to admit or treat the person if the hospital does not ordinarily provide the services required by the person. A private or public general hospital which violates this paragraph shall forfeit not more than $500.

(16) PAYMENT FOR TREATMENT. (a) Liability for payment for care, services and supplies provided under this section, the collection and enforcement of such payments, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

(b) Payment for treatment of persons treated under s. 302.38 shall be made under that section.

(c) Payment of attorney fees for appointed attorneys in the case of children and indigents shall be in accordance with ch. 977.

(17) APPLICABILITY OF OTHER LAWS; PROCEDURE. (a) Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment.

(b) All administrative procedure followed by the secretary in the implementation of this section shall be in accordance with ch. 227.

(18) CONSTRUCTION. This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section insofar as possible among states which enact similar laws.

(19) SHORT TITLE. This section may be cited as the "Alcoholism and Intoxication Treatment Act".

History: 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80; 1977 c. 29; 1977 c. 187 ss. 44, 134, 135; 1977 c. 203 s. 106; 1977 c. 428; 1977 c. 449 s. 497; Sup. Ct. Order, 83 Wis. 2d xiii (1987); 1979 c. 32 s. 92 (11); Sup. Ct. Order, eff. 1–1–80; 1979 c. 221 ss. 417, 2200 (20); 1979 c. 300, 331, 356; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 289, 314; 1983 a. 27 ss. 1116 to 1121, 2202 (20); 1985 a. 29 s. 3202 (56); 1985 a. 139; 1985 a. 176 ss. 533 to 556, 615; 1985 a. 265; 1985 a. 332 s. 251 (1); 1987 a. 339, 366; 1989 a. 31, 336, 359; 1991 a. 39; 1993 a. 16, 27, 213, 451, 490; 1995 a. 27 ss. 3268, 3269, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 35, 237; 1999 a. 9; 2001 a. 61.

Cross Reference: See also ch. HFS 75, Wis. adm. code.

Judicial Council Note, 1981: Reference to a "writ" of habeas corpus in sub. (13) (m) has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613–A]

A one–person petition under sub. (12) is sufficient for commitment only until the preliminary hearing; a 3–person petition under sub. (13) is required for commitment beyond that time period. In Matter of B.A.S.: State v. B.A.S. 134 Wis. 2d 291, 397 N.W.2d 114 (Ct. App. 1986).

Criminal charges of bail jumping based solely on the consumption of alcohol do not violate this section. Sub. (1) is intended only to prevent prosecutions for public drunkenness. State ex rel. Jacobus v. State, 208 Wis. 2d 39, 559 N.W.2d 900 (1997).

The requirement under sub. (13) (e) that a person sought to be committed have access to records and reports does not require the county to file the specified records with the trial court prior to a final hearing. County of Dodge v. Michael J.K. 209 Wis. 2d 499, 564 N.W.2d 350 (Ct. App. 1997).

Persons incapacitated by alcohol who engage in disorderly conduct in a treatment facility may be so charged, but not merely for the purpose of arranging for their confinement in jail for security during detoxification. 64 Atty. Gen. 161.

The revision of Wisconsin's law of alcoholism and intoxication. Robb, 58 MLR 88.

Wisconsin's new alcoholism act encourages early voluntary treatment. 1974 WBB No. 3.

51.46 Priority for pregnant women for private treatment for alcohol or other drug abuse. For inpatient or outpatient treatment for alcohol or other drug abuse, the first priority for services that are available in privately operated facilities, whether on a voluntary or involuntary basis, is for pregnant women who suffer from alcoholism, alcohol abuse or drug dependency.

History: 1997 a. 292.

51.47 Alcohol and other drug abuse treatment for minors without parental consent. (1) Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved, or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian and may render those services to a minor under 12 years of age without obtaining the consent of or notifying the minor's parent or guardian, but only if a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age. An assessment under this subsection shall conform to the criteria specified in s. 938.547 (4). Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

(2) The physician or health care facility shall obtain the consent of the minor's parent or guardian:

(a) Before performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and the consent of the minor's parent or guardian is not readily obtainable.

(b) Before administering any controlled substances to the minor, except to detoxify the minor under par. (c).

(c) Before admitting the minor to an inpatient treatment facility, unless the admission is to detoxify the minor for ingestion of alcohol or other drugs.

(d) If the period of detoxification of the minor under par. (c) extends beyond 72 hours after the minor's admission as a patient.

(3) The physician or health care facility shall notify the minor's parent or guardian of any services rendered under this section as soon as practicable.

(4) No physician or health care facility rendering services under sub. (1) is liable solely because of the lack of consent or notification of the minor's parent or guardian.

History: 1979 c. 331; 1985 a. 281; 2001 a. 16.

Except for those services for which parental consent is necessary under sub. (2), a physician or health care facility may release outpatient or detoxification services information only with the consent of a minor patient, provided the minor is twelve years of age or over. 77 Atty. Gen. 187.

51.48 Alcohol and other drug testing, assessment, and treatment of minor without minor's consent. A minor's parent or guardian may consent to have the minor tested for the presence of alcohol or other drugs in the minor's body or to have the minor assessed by an approved treatment facility for the minor's abuse of alcohol or other drugs according to the criteria specified in s. 938.547 (4). If, based on the assessment, the approved treatment facility determines that the minor is in need of treatment for the abuse of alcohol or other drugs, the approved treatment facility shall recommend a plan of treatment that is appropriate for the minor's needs and that provides for the least restrictive form of treatment consistent with the minor's needs. That treatment may consist of outpatient treatment, day treatment, or, if the minor is admitted in accordance with s. 51.13, inpatient treatment. The parent or guardian of the minor may consent to the treatment recommended under this section. Consent of the minor for testing, assessment, or treatment under this section is not required.

History: 1999 a. 9; 2001 a. 16.

51.59 Incompetency not implied. (1) No person is deemed incompetent to manage his or her affairs, to contract, to

hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of his or her admission to a facility in accordance with this chapter or detention or commitment under this chapter.

(2) This section does not authorize an individual who has been involuntarily committed or detained under this chapter to refuse treatment during such commitment or detention, except as provided under s. 51.61 (1) (g) and (h).

History: 1977 c. 428; 1987 a. 366.

51.61 Patients rights. (1) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

(a) Upon admission or commitment be informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(b) 1. Have the right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this paragraph. Patients may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

a. The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;

b. The labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

c. The patient has given his or her written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

d. The labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.

2. Patients may also voluntarily engage in noncompensated therapeutic labor which is of financial benefit to the facility, if the conditions for engaging in compensated labor under this paragraph are met and if:

a. The facility has attempted to provide compensated labor as a first alternative and all resources for providing compensated labor have been exhausted;

b. Uncompensated therapeutic labor does not cause layoffs of staff hired by the facility to otherwise perform such labor; and

c. The patient is not required in any way to perform such labor. Tasks of a personal housekeeping nature are not to be considered compensable labor.

3. Payment to a patient performing labor under this section shall not be applied to costs of treatment without the informed, written consent of such patient. This paragraph does not apply to individuals serving a criminal sentence who are transferred from a state correctional institution under s. 51.37 (5) to a treatment facility.

(cm) Have the rights specified under subd. 1. to send and receive sealed mail, subject to the limitations specified under subd. 2.

1. Patients have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, government officials, private physicians, and licensed psychologists, and have reasonable access to letter writing materials including postage stamps. A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients, prisoners, or staff. Such reasons shall be written in the individual's treatment record. The officers and staff of a facility may not read any mail covered by this subdivision.

2. The rights of a patient detained or committed under ch. 980 to send and receive sealed mail are subject to the following limitations:

a. An officer or staff member of the facility at which the patient is placed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

b. The director of the facility or his or her designee may, in accordance with the standards and the procedure under sub. (2) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the director or his or her designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of others.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commitment as provided in s. 51.20 (16).

(e) Except in the case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or protective placement, under 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.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition, under 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.

(fm) Have the right to be informed of his or her treatment and care and to participate in the planning of his or her treatment and care.

(g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2., or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual who is alleged to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe

that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent.

4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment 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 medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(h) Have a right to be free from unnecessary or excessive medication at any time. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. Except when medication or medical treatment has been ordered by the court under par. (g) or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i) 1. Except as provided in subd. 2., have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation that ensures that the dignity of the individual is protected, that the safety of the individual is ensured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. If the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than one hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director, in the case of isolation, or the physician so designated in the case of restraint. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan, and the rights specified in this subsection are provided to the patient. The use of isolation as a part of a treatment plan shall be explained to the patient and to his or her guardian, if any, by the person who provides the treatment. A treatment plan that incorporates isolation shall be evaluated at least once every 2 weeks. Patients who have a recent history of physical aggression may be restrained during transport to or from the facility. Persons who are committed or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while under this status, are transferred to a hospital, as defined in s. 50.33 (2), for medical care may be isolated for security reasons within locked facilities in the hospital. Patients who are committed or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, may be restrained for security reasons during transport to or from the facility.

2. Patients in the maximum security facility at the Mendota Mental Health Institute may be locked in their rooms during the night shift and for a period of no longer than one hour and 30 minutes during each change of shift by staff to permit staff review of patient needs. Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift, if they reside in a maximum or medium security unit in which each room is equipped with a toilet and sink, or if they reside in a unit in which each room is not equipped with a toilet and sink and the number of patients outside their rooms equals or exceeds the number of toilets in the unit, except that patients who do not have toilets in their rooms must be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Patients in the maximum security facility at the Mendota Mental Health Institute, or patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may also be locked in their rooms on a unit–wide or facility–wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility

or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. A unit–wide or facility–wide emergency isolation order may only be authorized by the director of the unit or facility where the order is applicable or his or her designee. A unit–wide or facility–wide emergency isolation order affecting the Mendota Mental Health Institute must be approved within one hour after it is authorized by the director of the Mendota Mental Health Institute or the director's designee. An emergency order for unit–wide or facility–wide isolation may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit–wide or facility–wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Each unit in the maximum security facility at the Mendota Mental Health Institute and each unit in a facility specified under s. 980.065 shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. The isolation policies shall be reviewed and approved by the director of the Mendota Mental Health Institute or the director's designee, or by the director of the facility specified under s. 980.065 or his or her designee, whichever is applicable.

(j) Have a right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian after consultation with independent specialists and the patient's legal counsel. Such proposed research shall first be reviewed and approved by the institution's research and human rights committee created under sub. (4) and by the department before such consent may be sought. Prior to such approval, the committee and the department shall determine that research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. department of health and human services for projects supported by that agency.

(k) Have a right not to be subjected to treatment procedures such as psychosurgery, or other drastic treatment procedures without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any. Express and informed consent of the patient after consultation with the patient's counsel and legal guardian, if any, is required for the use of electroconvulsive treatment.

(L) Have the right to religious worship within the facility if the patient desires such an opportunity and a member of the clergy of the patient's religious denomination or society is available to the facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(m) Have a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(n) Have the right to confidentiality of all treatment records, have the right to inspect and copy such records, and have the right to challenge the accuracy, completeness, timeliness or relevance of information relating to the individual in such records, as provided in s. 51.30.

(o) Except as otherwise provided, have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by the patient's guardian. A patient in Goodland Hall at the Mendota Mental Health Institute, or a patient detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may be filmed or taped for security purposes without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms for any purpose without the patient's consent.

(p) Have reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(q) Be permitted to use and wear his or her own clothing and personal articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(r) Be provided access to a reasonable amount of individual secure storage space for his or her own private use.

(s) Have reasonable protection of privacy in such matters as toileting and bathing.

(t) Be permitted to see visitors each day.

(u) Have the right to present grievances under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or community mental health program without justifiable fear of reprisal and to communicate, subject to par. (p), with public officials or with any other person without justifiable fear of reprisal.

(v) Have the right to use his or her money as he or she chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court–appointed guardian of the patient's estate or a representative payee. If a treatment facility or community mental health program so approves, a patient or his or her guardian may authorize in writing the deposit of money in the patient's name with the facility or program. Any earnings attributable to the money accrue to the patient. The treatment facility or community mental health program shall maintain a separate accounting of the deposited money of each patient. The patient or his or her guardian shall receive, upon written request by the patient or guardian, a written monthly account of any financial transactions made by the treatment facility or community mental health program with respect to the patient's money. If a patient is discharged from a treatment facility or community mental health program, all of the patient's money, including any attributable accrued earnings, shall be returned to the patient. No treatment facility or community mental health program or employee of such a facility or program may act as representative payee for a patient for social security, pension, annuity or trust fund payments or other direct payments or monetary assistance unless the patient or his or her guardian has given informed written consent to do so or unless a representative payee who is acceptable to the patient or his or her guardian and the payer cannot be identified. A community mental health program or treatment facility shall give money of the patient to him or her upon request, subject to any limitations imposed by guardianship or representative payeeship, except that an inpatient facility may, as a part of its security procedures, limit the amount of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(w) 1. Have the right to be informed in writing, before, upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their right to receive information under subd. 3., except that a minor patient's parents may not

be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

3. A patient, a patient's relative who may be liable for the cost of the patient's care and treatment or a patient's guardian may request information about charges for care and treatment services at the treatment facility or community mental health program. If a treatment facility or community mental health program receives such a request, the treatment facility or community mental health program shall promptly provide to the individual making the request written information about the treatment facility's or community mental health program's charges for care and treatment services. Unless the request is made by the patient, the guardian of a patient adjudged incompetent under ch. 880, the parent or guardian of a minor who has access to the minor's treatment records under s. 51.30 (5) (b) 1. or a person designated by the patient's informed written consent under s. 51.30 (4) (a) as a person to whom information may be disclosed, information released under this subdivision is limited to general information about the treatment facility's or community mental health program's charges for care and treatment services and may not include information which may not be disclosed under s. 51.30.

(x) Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(2) A patient's rights guaranteed under sub. (1) (p) to (t) may be denied for cause after review by the director of the facility, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist in the patient's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the director of the facility or his or her designee. There shall be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or his or her representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in sub. (5) or, alternatively or in addition to the use of such procedure, may bring an action under sub. (7).

(3) The rights accorded to patients under this section apply to patients receiving services in outpatient and day-service treatment facilities, as well as community mental health programs, insofar as applicable.

(4) (a) Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

(c) No committee may consist entirely of persons who are officers, employees or agents of or are otherwise associated with the facility, apart from their membership on the committee.

(d) No committee may consist entirely of members of a single professional group.

(e) A majority of the membership of the committee constitutes a quorum to do business.

(5) (a) The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall, except for the grievance procedures of the Mendota and Winnebago mental health institutes and the state centers for the developmentally disabled, implement a grievance procedure which complies with par. (b) to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.

(b) The department shall promulgate rules that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include all of the following components:

1. Written policies and procedures regarding the uses and operation of the grievance system.

2. A requirement that a person, who is the contact for initiating and processing grievances, be identified within the department and in each county department under ss. 51.42 and 51.437 and be specified by each service provider.

3. An informal process for resolving grievances.

4. A formal process for resolving grievances, in cases where the informal process fails to resolve grievances to the patient's satisfaction.

5. A process for notification of all patients of the grievance process.

6. Time limits for responses to emergency and nonemergency grievances, as well as time limits for deciding appeals.

7. A process which patients may use to appeal unfavorable decisions within the department or county department under s. 51.42 or 51.437 or through the service provider.

8. A process which may be used to appeal final decisions under subd. 7. of the department, county department under s. 51.42 or 51.437 or service provider to the department of health and family services.

9. Protections against the application of sanctions against any complainant or any person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider who assists a complainant in filing a grievance.

(c) Each county department of community programs shall attach a statement to an application for recertification of its community mental health programs or treatment facilities that are operated by or under contract with the county. The statement shall indicate if any complaints or allegations of violations of rights established under this section were made during the certification period immediately before the period of recertification that is requested and shall summarize any complaints or allegations made. The statement shall contain the date of the complaint or allegation, the disposition of the matter and the date of disposition. The department shall consider the statement in reviewing the application for recertification.

(d) No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a rea-

sonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

(7) (a) Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than $100 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(b) Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section. The patient may recover such damages as may be proved together with exemplary damages of not less than $500 nor more than $1,000 for each violation, together with costs and reasonable actual attorney fees. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an action to enjoin the unlawful violation or denial of rights under this section and may in the same action seek damages as provided in this section. The individual may also recover costs and reasonable actual attorney fees if he or she prevails.

(d) Use of the grievance procedure established under sub. (5) is not a prerequisite to bringing an action under this subsection.

(7m) Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than $1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1) (p), with a court, government official or staff member of the protection and advocacy agency that is designated under s. 51.62 or with legal counsel.

(8) Any informed consent which is required under sub. (1) (a) to (i) may be exercised by the patient's legal guardian if the patient has been adjudicated incompetent and the guardian is so empowered, or by the parent of the patient if the patient is a minor.

(9) The department shall promulgate rules to implement this section.

(10) No person who, in good faith, files a report with the appropriate examining board concerning the violation of rights under this section by persons licensed, certified, registered or permitted under ch. 441, 446, 450, 455 or 456, or who participates in an investigation of an allegation by the appropriate examining board, is liable for civil damages for the filing or participation.

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292; 2001 a. 16 ss. 1993j to 1993w, 4034zk, 4034zl; 2001 a. 104.

Cross Reference: See also ch. HFS 94, Wis. adm. code.

A patient in a state facility can recover fees under sub. (7) (c) from the county. Matter of Protective Placement of J. S. 144 Wis. 2d 670, 425 N.W.2d 15 (Ct. App. 1988).

The court may order an agency to do planning and the implementation work necessary to fulfill the obligation to order placement conforming to ss. 55.06 (9) (a) and 51.61 (1) (e). In Matter of J.G.S. 159 Wis. 2d 685, 465 N.W.2d 227 (Ct. App. 1990).

A nurse's decision to take a mental health patient on a recreational walk is not treatment under sub. (1) (f), and no cause of action was created under this section for injuries incurred when the patient fell. Erbstoeaer v. American Casualty Co. 169 Wis. 2d 637, 486 N.W.2d 549 (Ct. App. 1992).

Sub. (1) (g) 4. is not merely illustrative; it establishes the only standard by which a court may determine whether a patient is competent to refuse psychotropic medication. Factors to be considered in determining whether this competency standard is met are discussed. Mental Condition of Virgil D. 189 Wis. 2d 1, 524 N.W.2d 894 (1994).

Sub. (1) (k) is unconstitutionally overbroad because it prevents all patients unable to give "express and informed" consent from receiving electroconvulsive treatment under any circumstances, even when the treatment may be life saving. Professional Guardianships, Inc. v. Ruth E.J. 196 Wis. 2d 794, 540 N.W.2d 213 (Ct. App. 1995).

Court commissioners, including probate court commissioners, have the authority to conduct a hearing under s. 51.61 (1) (g). Carol J. R. v. County of Milwaukee, 196 Wis. 2d 882, 540 N.W.2d 233 (Ct. App. 1995).

In an action for negligence and malpractice, when a provider's treatment techniques or deficiencies were part and parcel of the plaintiff's claim, it was appropriate to award costs and attorney fees under sub. (7) (a). Wright v. Mercy Hospital, 206 Wis. 2d 448, 557 N.W.2d 846 (Ct. App. 1996).

Sub. (7) contemplates two separate and distinct causes of action. Par. (a) applies when the denial of a patient's rights have caused actual damages. Par. (b) does not require damages, but allows recovery if the patient's rights were violated willfully, knowingly, and unlawfully. Schaidler v. Mercy Medical Center of Oshkosh, Inc. 209 Wis. 2d 457, 563 N.W.2d 554 (Ct. App. 1997).

This section and ch. 980 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed under ch. 980. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435.

Involuntarily committed persons are entitled to more considerate treatment and conditions of confinement than criminals, but their rights are not absolute. A restriction of rights must be reasonably related to legitimate therapeutic and institutional interests. West v. Macht, 2000 WI App 134, 237 Wis. 2d 265, 614 N.W.2d 34.

Nonconsensual drug therapy did not violate due process. Stensvad v. Reivitz, 601 F. Supp. 128 (1985).

Sub. (1) (e) and (i) do not restrict the discretion of institution administrators to restrain patients during transport. Thielman v. Leean, 140 F. Supp. 2d 982 (2001). Affirmed. 282 F. 3d 478 (2002).

51.62 Protection and advocacy system. (1) DEFINITIONS. In this section:

(ag) "Abuse" means any of the following:

1. An act, omission or course of conduct by another that is inflicted intentionally or recklessly on an individual with developmental disability or mental illness and that does at least one of the following:

a. Results in bodily harm or great bodily harm to the individual.

b. Intimidates, humiliates, threatens, frightens or otherwise harasses the individual.

2. The forcible administration of medication to an individual with developmental disability or mental illness, with the knowledge that no lawful authority exists for the forcible administration.

3. An act to an individual with developmental disability or mental illness that constitutes first degree, 2nd degree, 3rd degree or 4th degree sexual assault as specified under s. 940.225.

(am) "Developmental disability" means a severe, chronic disability of a person that is characterized by all of the following:

1. Is attributable to a mental or physical impairment or a combination of a mental and a physical impairment.

2. Is manifested before the person has attained the age of 22.

3. Is likely to continue indefinitely.

4. Results in substantial functional limitation in at least 3 of the following areas of major life activity:

a. Self–care.

b. Receptive and expressive language.

c. Learning.

d. Mobility.

e. Self–direction.

f. Capacity for independent living.

g. Economic self–sufficiency.

5. Requires a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) "Inpatient health care facility" has the meaning provided under s. 50.135 (1), except that it does include community–based residential facilities as defined under s. 50.01 (1g).

(bm) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her welfare, or the welfare of others, or of the community and is an inpatient or resident in a facility rendering care or treatment or has been discharged from the facility for not more than 90 days.

(br) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of an individual with developmental disability or mental illness.

(c) "Protection and advocacy agency" means an entity designated by the governor to implement a system to protect and advocate the rights of persons with developmental disabilities, as authorized under 42 USC 6012 or mental illness, as authorized under 42 USC 10801 to 10851.

(2) DESIGNATION. (a) The governor shall designate as the protection and advocacy agency a private, nonprofit corporation that is independent of all of the following:

1. A state agency.

2. The council on developmental disabilities and the council on mental health.

3. An agency that provides treatment, services or habilitation to persons with developmental disabilities or mental illness.

(b) After the governor has designated a protection and advocacy agency under par. (a), the protection and advocacy agency so designated shall continue in that capacity unless and until the governor redesignates the protection and advocacy agency to another private, nonprofit corporation that meets the requirements of par. (a). The governor may redesignate this private, nonprofit corporation the protection and advocacy agency only if all of the following conditions are met:

1. Good cause exists for the redesignation.

2. Prior notice and an opportunity to comment on a proposed redesignation has been given to all of the following:

a. The council on developmental disabilities and the council on mental health.

b. Major organizations, in the state, of persons with developmental disabilities or mental illness and families and representatives of these persons.

(c) If the governor has designated a protection and advocacy agency before July 20, 1985, that entity shall continue in that capacity unless and until the governor redesignates the protection and advocacy agency to another private, nonprofit corporation that meets the requirements of par. (a).

(3) AGENCY POWERS AND DUTIES. (a) The protection and advocacy agency may:

1. Pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illness and to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illness.

2. Have access to records as specified under ss. 51.30 (4) (b) 18. and 146.82 (2) (a) 9.

2m. Have immediate access to any person with mental illness or developmental disability, regardless of age, who has requested services or on whose behalf services have been requested from the protection and advocacy agency or concerning whom the protection and advocacy agency has reasonable cause to believe that abuse, neglect or a violation of rights has occurred.

3. Contract with a private, nonprofit corporation to confer to that corporation the powers and duties specified for the protection and advocacy agency under this subsection, except that the corporation may have access to records as specified under ss. 51.30 (4) (b) 18. and 146.82 (2) (a) 9. only if all of the following conditions are met:

a. The contract of the corporation with the protection and advocacy agency so provides.

b. The department has approved the access.

(b) The protection and advocacy agency shall pay reasonable costs related to the reproducing or copying of patient health care or treatment records.

(3m) FUNDING. From the appropriation under s. 20.435 (7) (md), the department may not distribute more than $75,000 in each fiscal year to the protection and advocacy agency for performance of community mental health protection and advocacy services.

(4) DEPARTMENTAL DUTIES. The department shall provide the protection and advocacy agency with copies of annual surveys and plans of correction for intermediate care facilities for the mentally retarded on or before the first day of the 2nd month commencing after completion of the survey or plan.

History: 1985 a. 29; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 31; 1993 a. 27; 1995 a. 27, 169; 1997 a. 27, 35.

The Wisconsin statutory scheme does not give an agency express authority to investigate incidents of abuse and neglect or to obtain patient records, but under federal law any state system established to protect the rights of persons with developmental disabilities has that authority. Wisconsin Coalition for Advocacy v. Czaplewski, 131 F. Supp. 2d 1039 (2001).

51.63 Private pay for patients. Any person may pay, in whole or in part, for the maintenance and clothing of any mentally ill, developmentally disabled, alcoholic or drug dependent person at any institution for the treatment of persons so afflicted, and his or her account shall be credited with the sums paid. The person may also be likewise provided with such special care in addition to those services usually provided by the institution as is agreed upon with the director, upon payment of the charges therefor.

History: 1975 c. 430.

51.64 Reports of death required; penalty; assessment. (1) In this section:

(a) "Physical restraint" includes all of the following:

1. A locked room.

2. A device or garment that interferes with an individual's freedom of movement and that the individual is unable to remove easily.

3. Restraint by a treatment facility staff member of a person admitted or committed to the treatment facility, by use of physical force.

(b) "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(2) (a) No later than 24 hours after the death of a person admitted or committed to a treatment facility, the treatment facility 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.

3. There is reasonable cause to believe that the death was a suicide.

History: 1989 a. 336.

51.65 Segregation of tuberculosis patients. The department shall make provision for the segregation of tuberculosis patients in the state–operated and community–operated facilities, and for that purpose may set apart facilities and equip facilities for the care and treatment of such patients.

History: 1975 c. 430.

51.67 Alternate procedure; protective services. If, after hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and 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. If the court orders temporary protective placement for an individual under the age of 22 years in a center for the developmentally disabled, this placement may be made only at 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. Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe 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:

(1) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(2) 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.

History: 1975 c. 430; 1977 c. 187, 428; 1979 c. 89, 336; 1985 a. 29; 1987 a. 366; 1995 a. 268.

51.75 Interstate compact on mental health. The interstate compact on mental health is enacted into law and entered into by this state with all other states legally joining therein substantially in the following form:

THE INTERSTATE COMPACT ON
MENTAL HEALTH.

The contracting states solemnly agree that:

(1) ARTICLE I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

(2) ARTICLE II. As used in this compact:

(a) "Aftercare" means care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(b) "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(c) "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself or herself and his or her affairs, but shall not include mental illness as defined herein.

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

(e) "Patient" means any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(f) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(g) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(h) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) ARTICLE III. (a) Whenever a person physically present in any party state is in need of institutionalization by reason of mental illness or mental deficiency, the person shall be eligible for care and treatment in an institution in that state irrespective of the person's residence, settlement or citizenship, qualifications.

(b) The provisions of par. (a) to the contrary notwithstanding any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion thereof. The factors referred to in this paragraph include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as are considered appropriate.

(c) No state is obliged to receive any patient under par. (b) unless the sending state has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient and given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(d) If the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that the interstate patient would be taken if the interstate patient were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

(4) ARTICLE IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all rea-

sonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as are pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on aftercare pursuant to the terms of this subsection, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

(5) ARTICLE V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape, in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient shall be detained in the state where found, pending disposition in accordance with law.

(6) ARTICLE VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any state party to this compact, without interference.

(7) ARTICLE VII. (a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

(8) ARTICLE VIII. (a) Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court by law requires, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or continue the guardian's power and responsibility, whichever it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in par. (a) includes any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

(9) ARTICLE IX. (a) No provision of this compact except sub. (5) applies to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it is the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

(10) ARTICLE X. (a) Each party state shall appoint a "compact administrator" who, on behalf of that state, shall act as general coordinator of activities under the compact in that state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by that state either in the capacity of sending or receiving state. The compact administrator or the duly designated representative of the compact administrator shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

(11) ARTICLE XI. The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

(12) ARTICLE XII. This compact enters into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with all states legally joining therein.

(13) ARTICLE XIII. (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal takes effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by sub. (7) (b) as to costs or from any supplementary agreement made pursuant to sub. (11) shall be in accordance with the terms of such agreement.

(14) ARTICLE XIV. This compact shall be liberally construed so as to effectuate the purpose thereof. The provisions of this compact are 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 is held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390; 1983 a. 189; 1991 a. 316.

51.76 Compact administrator. Pursuant to the interstate compact on mental health, the secretary shall be the compact administrator and, acting jointly with like officers of other party states, may promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement entered into by this state thereunder.

51.77 Transfer of patients. (1) In this section "relatives" means the patient's spouse, parents, grandparents, adult children, adult siblings, adult aunts, adult uncles and adult cousins, and any other relative with whom the patient has resided in the previous 10 years.

(2) Transfer of patients out of Wisconsin to another state under the interstate compact on mental health shall be upon recommendation of no less than 3 physicians licensed under ch. 448 appointed by the court of competent jurisdiction and shall be only in accord with the following requirements:

(a) That the transfer be requested by the patient's relatives or guardian or a person with whom the patient has resided for a substantial period on other than a commercial basis. This requirement does not preclude the compact administrator or the institution in which the patient is in residence from suggesting that relatives or the guardian request such transfer.

(b) That the compact administrator determine that the transfer of the patient is in the patient's best interest.

(c) That the patient have either interested relatives in the receiving state or a determinable interest in the receiving state.

(d) That the patient, guardian and relatives, as determined by the patient's records, whose addresses are known or can with reasonable diligence be ascertained, be notified.

(e) That none of the persons given notice under par. (d) object to the transfer of said patient within 30 days of receipt of such notice.

(f) That records of the intended transfer, including proof of service of notice under par. (d) be reviewed by the court assigned to exercise probate jurisdiction for the county in which the patient is confined or by any other court which a relative or guardian requests to do so.

(3) If the request for transfer of a patient is rejected for any of the reasons enumerated under sub. (2), the compact administrator shall notify all persons making the request as to why the request was rejected and of the patient's right to appeal the decision to a competent court.

(4) If the patient, guardian or any relative feels that the objections of other relatives or of the compact administrator raised under sub. (2) are not well–founded in preventing transfer, such person may appeal the decision not to transfer to a competent court having jurisdiction which shall determine, on the basis of evidence by the interested parties and psychiatrists, psychologists and social workers who are acquainted with the case, whether transfer is in the best interests of the patient. The requirements of sub. (2) (c) shall apply to this subsection.

(5) The determination of mental illness or developmental disability in proceedings in this state requires a finding of a court in accordance with the procedure contained in s. 51.20.

History: 1975 c. 430; 1977 c. 449; 1991 a. 316.

51.78 Supplementary agreements. The compact administrator may enter into supplementary agreements with appropriate officials of other states under s. 51.75 (7) and (11). If such supplementary agreements require or contemplate the use of any institution or facility of this state or county or require or contemplate the provision of any service by this state or county, no such agreement shall take effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: 1981 c. 390.

51.79 Transmittal of copies. Duly authorized copies of ss. 51.75 to 51.80 shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States and the council of state governments.

History: 1979 c. 89.

51.80 Patients' rights. Nothing in the interstate compact on mental health shall be construed to abridge, diminish or in any way impair the rights or liberties of any patient affected by the compact.

51.81 Uniform extradition of persons of unsound mind act; definitions. The terms "flight" and "fled" as used in ss. 51.81 to 51.85 shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if the person then was under detention by law as a person of unsound mind and subject to detention. The word "state" wherever used in ss. 51.81 to 51.85 shall include states, territories, districts and insular and other possessions of the United States. As applied to a request to return any person within the purview of ss. 51.81 to 51.85 to or from the District of Columbia, the words, "executive authority," "governor" and "chief magistrate," respectively, shall include a justice of the supreme court of the District of Columbia and other authority.

History: 1971 c. 40 s. 93; 1991 a. 316.

51.82 Delivery of certain nonresidents. A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of the flight: (a) The person was under detention by law in a hospital, asylum or other institution for the insane as a person of unsound mind; or (b) the person had been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his or her person having been acquired by a court of competent jurisdiction of the state from which the person fled; or (c) the person was subject to detention in that state, being then the person's legal domicile (personal service of process having been made) based on legal proceedings pending there to have the person declared of unsound mind, shall on demand of the executive authority of the state from which the person fled, be delivered for removal thereto.

History: 1975 c. 430; 1991 a. 316.

51.83 Authentication of demand; discharge; costs. (1) Whenever the executive authority of any state demands of the executive authority of this state, any fugitive within the purview of s. 51.82 and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled with an affidavit made before a proper officer showing the person to be such a fugitive, it is the duty of the executive authority of this state to cause the fugitive to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to the agent when the agent appears.

(2) If no such agent appears within 30 days from the time of the apprehension, the fugitive may be discharged. All costs and expenses incurred in the apprehending, securing, maintaining and transmitting such fugitive to the state making such demand, shall be paid by such state. Any agent so appointed who receives custody of the fugitive shall be empowered to transmit the fugitive to the state from which the fugitive has fled. The executive authority of this state is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1991 a. 316.

51.84 Limitation of time to commence proceeding. Any proceedings under ss. 51.81 to 51.85 shall be begun within one year after the flight referred to in ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1981 c. 314 s. 146.

The limitation period commences on the date the committing state discovers the patient in the asylum state. State ex rel. Melentowich v. Klink, 108 Wis. 2d 374, 321 N.W.2d 272 (1982).

51.85 Interpretation. Sections 51.81 to 51.85 shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1971 c. 40 s. 93.

51.87 Interstate contracts for services under this chapter. (1) PURPOSE AND POLICY. The purpose of this section is to enable appropriate treatment to be provided to individuals, across state lines from the individuals' state of residence, in qualified facilities that are closer to the homes of the individuals than are facilities available in their home states.

(2) DEFINITIONS. In this section:

(a) "Receiving agency" means a public or private agency or county department which, under this section, provides treatment to individuals from a state other than the state in which the agency or county department is located.

(b) "Receiving state" means the state in which a receiving agency is located.

(c) "Sending agency" means a public or private agency located in a state which sends an individual to another state for treatment under this section.

(d) "Sending state" means the state in which a sending agency is located.

(3) PURCHASE OF SERVICES. A county department under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in states bordering on Wisconsin to secure services under this chapter for persons who receive services through the county department, except that services may not be secured for persons committed under s. 971.14 or 971.17. Section 46.036 (1) to (6) applies to contracts entered into under this section by county departments under s. 46.23, 51.42 or 51.437.

(4) PROVISION OF SERVICES. A county department under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in a state bordering on Wisconsin to provide services under this chapter for residents of the bordering state in approved treatment facilities in this state, except that services may not be provided for residents of the bordering state who are involved in criminal proceedings.

(5) CONTRACT APPROVAL. A contract under this section may not be validly executed until the department has reviewed and approved the provisions of the contract, determined that the receiving agency provides services in accordance with the standards of this state and the secretary has certified that the receiving state's laws governing patient rights are substantially similar to those of this state.

(6) RESIDENCE NOT ESTABLISHED. No person establishes legal residence in the state where the receiving agency is located while the person is receiving services pursuant to a contract under this section.

(7) TREATMENT RECORDS. Section 51.30 applies to treatment records of an individual receiving services pursuant to a contract under this section through a receiving agency in this state, except that the sending agency has the same right of access to the treatment records of the individual as provided under s. 51.30 for a county department under s. 51.42 or 51.437.

(8) INVOLUNTARY COMMITMENTS. An individual who is detained, committed or placed on an involuntary basis under s. 51.15, 51.20 or 51.45 or ch. 55 may be confined and treated in another state pursuant to a contract under this section. An individual who is detained, committed or placed under the civil law of a state bordering on Wisconsin may be confined and treated in this state pursuant to a contract under this section. Court orders valid under the law of the sending state are granted recognition and reciprocity in the receiving state for individuals covered by a contract under this section to the extent that the court orders relate to confinement for treatment or care of a mental disability. Such court orders are not subject to legal challenge in the courts of the receiving state. Persons who are detained, committed or placed under the law of a sending state and who are transferred to a receiving state under this section continue to be in the legal custody of the authority responsible for them under the law of the sending state. Except in emergencies, those persons may not be transferred, removed or furloughed from a facility of the receiving agency without the specific approval of the authority responsible for them under the law of the sending state.

(9) APPLICABLE LAWS. While in the receiving state pursuant to a contract under this section, an individual shall be subject to all of the provisions of law and regulations applicable to persons detained, committed or placed pursuant to the corresponding laws of the receiving state, except those laws and regulations of the receiving state relating to length of confinement, reexaminations and extensions of confinement and except as otherwise provided by this section. The laws and regulations of the sending state relating to length of confinement, reexaminations and extensions of confinement shall apply. No person may be sent to another state pursuant to a contract under this section until the receiving state has enacted a law recognizing the validity and applicability of this state's laws as provided in this section.

(10) VOLUNTARY PLACEMENTS. If an individual receiving treatment on a voluntary basis pursuant to a contract under this section requests discharge, the receiving agency shall immediately notify the sending agency and shall return the individual to the sending state as directed by the sending agency within 48 hours after the request, excluding Saturdays, Sundays and legal holidays. The sending agency shall immediately upon return of the individual either arrange for the discharge of the individual or detain the individual pursuant to the emergency detention laws of the sending state.

(11) ESCAPED INDIVIDUALS. If an individual receiving services pursuant to a contract under this section escapes from the receiving agency and the individual at the time of the escape is subject to involuntary confinement under the law of the sending state, the receiving agency shall use all reasonable means to recapture the escapee. The receiving agency shall immediately report the escape to the sending agency. The receiving state has the primary responsibility for, and the authority to direct, the pursuit, retaking and prosecution of escaped persons within its borders and is liable for the cost of such action to the extent that it would be liable for costs if its own resident escaped.

(12) TRANSFERS BETWEEN FACILITIES. An individual may be transferred between facilities of the receiving state if transfers are permitted by the contract under this section providing for the individual's care.

(13) REQUIRED CONTRACT PROVISIONS. All contracts under this section shall do all of the following:

(a) Establish the responsibility for the costs of all services to be provided under the contract.

(b) Establish the responsibility for the transportation of clients to and from receiving facilities.

(c) Provide for reports by the receiving agency to the sending agency on the condition of each client covered by the contract.

(d) Provide for arbitration of disputes arising out of the provisions of the contract which cannot be settled through discussion between the contracting parties and specify how arbitrators will be chosen.

(e) Include provisions ensuring the nondiscriminatory treatment, as required by law, of employees, clients and applicants for employment and services.

(f) Establish the responsibility for providing legal representation for clients in legal proceedings involving the legality of confinement and the conditions of confinement.

(g) Establish the responsibility for providing legal representation for employees of the contracting parties in legal proceedings initiated by persons receiving treatment pursuant to the contract.

(h) Include provisions concerning the length of the contract and the means by which the contract can be terminated.

(i) Establish the right of qualified employees and representatives of the sending agency and sending state to inspect, at all reasonable times, the records of the receiving agency and its treatment facilities to determine if appropriate standards of care are met for clients receiving services under the contract.

(j) Require the sending agency to provide the receiving agency with copies of all relevant legal documents authorizing confinement of persons who are confined pursuant to law of the sending state and receiving services pursuant to a contract under this section.

(k) Require individuals who are seeking treatment on a voluntary basis to agree in writing to be returned to the sending state upon making a request for discharge as provided in sub. (10) and require an agent or employee of the sending agency to certify that the individual understands that agreement.

(L) Establish the responsibility for securing a reexamination for an individual and for extending an individual's period of confinement.

(m) Include provisions specifying when a receiving facility can refuse to admit or retain an individual.

(n) Specify the circumstances under which individuals will be permitted home visits and granted passes to leave the facility.

History: 1983 a. 365; 1985 a. 176, 332.

51.90 Antidiscrimination. No employee, prospective employee, patient or resident of an approved treatment facility, or consumer of services provided under this chapter may be discriminated against because of age, race, creed, color, sex or handicap.

History: 1975 c. 430.

51.91 Supplemental aid. (1) DECLARATION OF POLICY. The legislature recognizes that mental health is a matter of statewide and county concern and that the protection and improvement of health are governmental functions. It is the intent of the legislature, therefore, to encourage and assist counties in the construction of community mental health facilities, and public medical institutions as defined by rule of the department.

(2) ELIGIBILITY. (a) Any county which qualifies for additional state aid under s. 51.26, 1971 stats., and has obtained approval for the construction of mental health facilities pursuant to s. 46.17 may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities approved pursuant to s. 46.17.

(b) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of public medical institutions as defined by rule of the department.

(c) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities as defined by rule of the department.

(d) No county may claim aid under this section on any single obligation for more than 20 years.

(e) Termination of eligibility for aid under s. 51.26, 1971 stats., shall terminate eligibility for aid for the construction of mental health facilities, and failure to meet the requirements established for public medical institutions by rule of the department shall terminate eligibility for aid for the construction of public medical institutions. Failure to meet the requirements for mental health facilities established by rule of the department shall terminate eligibility for aid for the construction of mental health facilities.

(f) Mental health facilities shall include services required for the prevention, diagnosis, treatment and rehabilitation of the mentally ill, as established by rule of the department.

(3) LIMITATION OF AID. (a) Aid under this section shall be paid only on interest accruing after January 1, 1967, or after the date construction begins, whichever is later.

(b) Until June 30, 1970, such aid shall be at the rate of 60% of the interest obligations eligible under this section or that amount of such obligation as is equal to the percentage rate of participation of the state set forth in s. 49.52 (2), 1971 stats., whichever is higher. The contribution of the state for such interest accruing in each fiscal year shall be controlled by the percentage rate of participation under s. 49.52 (2), 1971 stats., on January 1 of that fiscal year. Beginning July 1, 1970, such aid shall be at the rate of 100%.

(c) This section applies only to construction projects approved for state interest aid by the department of health and family services prior to June 30, 1973.

(4) APPLICATION FOR AID. Application for aid under this section shall be filed with the department as prescribed by it. Such application shall include evidence of the existence of the indebtedness on which the county is obligated to pay interest. The department may by audit or investigation satisfy itself as to the amount and validity of the claim and, if satisfied, shall grant the aid provided by this section. Payment of aid shall be made to the county treasurer.

History: 1971 c. 125, 164, 211, 215; 1975 c. 430 s. 23; Stats. 1975 s. 51.91; 1993 a. 213; 1995 a. 27 s. 9126 (19).

51.95 Short title. This chapter shall be known as the "State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act".

History: 1975 c. 430 s. 59; Stats. 1975 s. 51.95; 1985 a. 264.

CHAPTER 55

PROTECTIVE SERVICE SYSTEM

55.001 Declaration of policy.
55.01 Definitions.
55.02 Protective service system; establishment.
55.03 Status of guardian.
55.04 Program responsibilities.
55.043 County protective services agency.
55.045 Funding.
55.05 Protective services.
55.06 Protective placement.
55.07 Patients' rights.

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

55.001 Declaration of policy. The legislature recognizes that many citizens of the state, because of the infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. These services should, to the maximum degree of feasibility under 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, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

History: 1973 c. 284; 1979 c. 221; 1995 a. 92.

Neither a district attorney nor a corporation counsel has a duty to petition for protective placement, determination of incompetency, or otherwise intervene when an apparently competent elderly person with a life threatening illness chooses to remain at home under a doctor's and family care rather than seeking a higher level of care that might extend her life. 74 Atty. Gen. 188.

55.01 Definitions. In this chapter:

(1) "Abuse" means any of the following:

(a) An act, omission or course of conduct by another that is inflicted intentionally or recklessly and that does at least one of the following:

1. Results in bodily harm or great bodily harm to a vulnerable adult.

2. Intimidates, humiliates, threatens, frightens or otherwise harasses a vulnerable adult.

(b) The forcible administration of medication to a vulnerable adult, with the knowledge that no lawful authority exists for the forcible administration.

(c) An act that constitutes first degree, second degree, third degree or fourth degree sexual assault as specified under s. 940.225.

(1g) "Agency" means a county department or any public or private board, corporation or association which is concerned with the specific needs and problems of developmentally disabled, mentally ill, alcoholic, drug dependent or aging persons.

(1m) "Bodily harm" has the meaning given in s. 939.22 (4).

(1p) "Caretaker" means the person, if any, who takes care of a vulnerable adult voluntarily or under a contract for care.

(1r) "County department", except as otherwise provided, means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 designated under s. 55.02.

(1t) "County protective services agency" means the county department designated in s. 55.02.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(2r) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(2t) "Great bodily harm" has the meaning given in s. 939.22 (14).

(3) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody.

(4) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the person's welfare.

(4m) "Mental illness" means mental disease to the extent that an afflicted person requires care, treatment or custody for his or her own welfare or the welfare of others or of the community.

(4p) "Misappropriation of property" means any of the following:

(a) The intentional taking, carrying away, use, transfer, concealment or retention of possession of the property of a vulnerable adult without the vulnerable adult's informed consent and with intent to deprive the vulnerable adult of possession of the property.

(b) Obtaining the property of a vulnerable adult by intentionally deceiving the vulnerable adult with a representation that is known to be a false representation, is made with intent to defraud and does defraud the vulnerable adult.

(4r) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of a vulnerable adult.

(5) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody.

(7) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

History: 1973 c. 284; 1975 c. 393, 430; 1979 c. 221; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1991 a. 316; 1993 a. 445.

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

55.02 Protective service system; establishment. The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons, and for persons with other like incapacities incurred at any age in accordance with rules promulgated by the department. The protective service system shall be designed to encourage independent

living and to avoid protective placement whenever possible. The system shall use the planning and advice of agencies, including the county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437. The chairperson of each county board of supervisors shall designate a county department under s. 46.215, 46.22, 51.42, or 51.437 that is providing services in his or her county or a joint mechanism of these county departments to have the responsibility for local planning for the protective service system. The chairperson of the Milwaukee County board of supervisors shall designate the county department under s. 46.215 to serve as the county protective services agency for purposes of s. 55.043. The department and these county departments shall cooperate in developing a coordinated system of services. The department shall provide direct services and enter into contracts with any responsible public or private agency for provision of protective services. In each county, the county department designated under this section shall determine the reporting requirements applicable to the county under s. 880.38 (3).

History: 1973 c. 284; 1975 c. 393; 1979 c. 221; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1985 a. 332 s. 251 (3); 1993 a. 445; 2001 a. 103.

55.03 Status of guardian. No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under s. 48.427 or 48.43.

History: 1973 c. 284; 1979 c. 330.

55.04 Program responsibilities. (1) The department shall have all of the following responsibilities in the administration of this chapter:

(a) *Protective services.* 1. Outreach.

2. Identification of persons in need of services.

3. Counseling and referral for services.

4. Coordination of services for individuals.

5. Tracking and follow–up.

6. Provision of social services.

7. Case management.

8. Legal counseling or referral.

9. Guardianship referral.

10. Diagnostic evaluation.

11. Any other responsibilities that the department considers appropriate.

(b) *Protective placement.* Evaluation, monitoring and provision of protective placements.

(2) All agencies providing protective services shall make such reports as the department may require.

(3) If service is obtained by order of a court, the provider of service shall make reports under sub. (2) as the court may direct.

(4) Where any responsibility or authority is created under this chapter upon or in relation to a guardian, such responsibility or authority is deemed to apply to a parent or person in the place of a parent in the case of a minor who is or who is alleged to be developmentally disabled.

History: 1973 c. 284; 1975 c. 430; 1979 c. 110 s. 60 (1); 2001 a. 103.

55.043 County protective services agency. (1) INVESTIGATION; POWERS. (a) If a county protective services agency has probable cause to believe that there is misappropriation of property or neglect or abuse of a vulnerable adult, the county protective services agency may conduct an investigation in Milwaukee County to determine if the vulnerable adult in question is in need of protective services. The county protective services agency shall conduct the investigation in accordance with standards established by the department for conducting the investigations. The investigation shall include at least one of the following:

1. Observation of or an interview with the vulnerable adult, in private to the extent practicable, and with or without consent of his or her guardian, if any.

2. A visit to the residence of the vulnerable adult.

3. An interview with the guardian, if any, and with the caretaker, if any, of the vulnerable adult.

4. A review of the treatment and patient health care records of the vulnerable adult.

5. A review of those financial records, if any, of the vulnerable adult that are maintained by the caretaker or landlord of the vulnerable adult or by a member of the immediate family of the vulnerable adult, the caretaker or the landlord.

(b) The county protective services agency may transport the vulnerable adult for performance of a medical examination by a physician if any of the following applies:

1. The vulnerable adult or his or her guardian, if any, consents to the examination.

2. The vulnerable adult is incapable of consenting to the examination and one of the following applies:

a. The vulnerable adult has no guardian.

b. The vulnerable adult's guardian refuses to consent to the examination, but the examination is authorized by order of a court.

(2) LOCAL ENFORCEMENT ASSISTANCE. The county protective services agency may request a sheriff or police officer to accompany the investigator during visits to the residence of the vulnerable adult or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the investigator of the county protective services agency to the residence of the vulnerable adult and shall provide other assistance as requested or necessary.

(3) RESTRAINING ORDER; INJUNCTION. If a person other than the vulnerable adult interferes with the investigation under sub. (1) or interferes with the delivery of protective services to the vulnerable adult, the county protective services agency may obtain a restraining order or injunction under s. 813.123 against the person.

(4) OFFER OF SERVICES. If upon investigation the county protective services agency finds misappropriation of property or neglect or abuse of a vulnerable adult, the county protective services agency may do one or more of the following:

(a) Offer services, including protective services under s. 55.05, a protective placement under s. 55.06, relocation assistance or other services.

(b) Take appropriate emergency action, including emergency protective placement under s. 55.06, if the county protective services agency considers that the emergency action is in the vulnerable adult's best interests and the emergency action is the least restrictive appropriate intervention.

(c) Refer the case to local law enforcement officials under sub. (2) for further investigation or to the district attorney, if the county protective services agency has reason to believe that a violation of chs. 939 to 951 has occurred.

(d) Refer the case to the licensing or certification authorities of the department or to other regulatory bodies if the residence, facility or program for the vulnerable adult is or should be licensed or certified or is otherwise regulated.

(e) Refer the case to the department of regulation and licensing if the misappropriation of property or neglect or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.

NOTE: Par. (e) is shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads:

(e) Refer the case to the department of regulation and licensing if the misappropriation of property or neglect or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 459.

(f) Bring a petition for a guardianship and protective service or protective placement if necessary to prevent misappropriation of property or neglect or abuse and if the vulnerable adult would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter and services.

(5) APPLICABILITY. This section does not apply to patients or residents of state–operated or county–operated inpatient institutions or hospitals issued certificates of approval under s. 50.35

unlcss the alleged misappropriation of property or neglect or abuse of such a patient or resident is alleged to have been done by a person other than an employee of the inpatient institution or hospital.

History: 1993 a. 445; 1997 a. 27; 2001 a. 74, 103.

55.045 Funding. The appropriate county department designated under **s.** 55.02 shall, within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the reasonable program needs of persons who arc protectively placed or who receive protective services under this chapter, including reasonable expenses for the evaluations required by s. 55.06 (8). Payment and collections for protective placement or protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with **s.** 46.10. The department may require that a person who is protectively placed or rcccives protcctivc services undcr this chapter provide reimbursement for services or care and custody received, based on the ability of the person to pay for such costs.

History: ***1995*** **a.** 92; 1999 a. 32.

55.05 Protective services. (1) PREFERENCE. The department in administering the protective services program shall contract with county departments and other agencies. If the county department contracts for protective services, the department and the county departments shall give preference to an agency with consumer and other citizen representation. The department shall provide services only if no other suitable agency is available. Courts shall adhere to the same preferences in ordering protective services.

(2) CONDITIONS REQUIRED. The department or an agency providing protective services under **s.** 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he or she needs protective service may seek such service.

(b) Any interested person may request protective services on behalf of a person in need of services. **A** guardian may request and consent to protective services on behalf of the guardian's ward.

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order protective services for an individual for whom a dctcrmination of incompetency is made under s. 880.33 if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order psychotropic medication as a protective service under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m). The court may authorize a guardian to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 (4r) (b) that the individual has substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan.

(3) VOLUNTARY SERVICES PREFERRED. An individual shall receive protcctivc services voluntarily unlcss ordered by the court, requested by a guardian or provided in accordance with sub. (4).

(4) EMERGENCY SERVICES. (a) Emergency services may be provided for not more than 72 hours where there is reason to believe that if the services are not provided. the person entitled to the services or others will incur a substantial risk of serious physical harm.

(b) Where it is necessary to forcibly enter a premises, the representative of an agency or of a county protective services agency shall obtain a court order authorizing entry and shall make the entry accompanied by a sheriff, police officer or member of a fire department. When it appears probable that substantial physical harm, irreparable injury or death may occur to an individual, the police officer, fire fighter or sheriff may enter a premises without a court order if the time required to obtain such an order would result in greater risk of physical harm to the individual.

(c) Where a forcible entry is made under par. (b), a report of the exact circumstances including the date, time, place, factual basis for the need of such entry and the exact services rendered shall be made and forwarded to the court within 14 days of entry by the person making such entry.

(5) ADMISSIONS WITHOUT COURT INVOLVEMENT. (a) A person who is legally and actually capable of consenting may consent to enter a group home; foster home. community–based residential facility, as defined under **s.** 50.01 (1g), adult family home, as defined in s. 50.01 (1). or nursing home without protective placement under **s.** 55.06.

(b) 1. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a foster home, group home or community based residential facility, as defined under s. 50.01 (1g), without a protective placement under **s.** 55.06 if the home or facility is licensed for fewer than 16 beds. Prior to providing that consent, and annually thereafter, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a home or facility that implements those rights.

2. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a nursing home if the person **is** admitted directly from a hospital inpatient unit for recuperative care for a period not to exceed 3 months, unlcss the hospital admission was for psychiatric care. Prior to providing that consent, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a nursing home that implements those rights. Following the 3-month period, a placement proceeding under **s.** 55.06 **is** required.

(c) If a person admitted under par. (b) verbally objects to or otherwise actively protests such an admission, the person in charge of the home or facility shall immediately notify the agency designated under s. 55.02 for the county in which the person is living. Representatives of that agency shall visit the person as soon as possible, but no later than 72 hours after notification, and do the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person's guardian regarding the reasons for the admission.

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of **s.** 55.06 (2) or (11) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under **s.** 55.06 (2). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

(d) The admission to a facility of a principal by a health care agent under the terms of a power of attorney for health care instrument and in accordance with ch. 155 or the admission of an individual to a nursing home or community–based residential facility under the requirements of **s.** 50.06 is not a protective placement under this chapter.

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 135 s. 83 (3); 1985 a. 176; 1987 a. 161 ss. 7, 13m; 1987 a. ***366;*** 1989 a. 200; 1991 a. 316; 1993 a. 187, 316, 445.

A guardian of a person, who became incompetent after voluntarily entering a nursing home with 16 or more beds, may not consent to the person's continued residence in the home. **Upon** the appointment **of** a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995).

Guardianships and Protective Placements in Wisconsin After ***Agnes T.*** Fennell. Wis. Law. May 1995.

55.06 Protective placement. (1) A protective placement under this section is a placcmcnt of a ward for the primary purpose

of providing care and custody. To be cligiblc for placement, an individual shall have attained the age of 18, but an individual who is alleged to he developmentally disabled may receive placement upon attaining the age of 14. No protective placement under this section may be ordered unless there is a determination of incompetency in accordance with ch. 880. except in the case of a minor who is alleged to be developmentally disabled, and there is a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12). A procedure for adult protective placement may be initiated 6 months prior to an individual's birthday at which he or she first becomes eligible for placement.

(a) The board designated under s. 55.02 or an agency designated by it may petition for appointment of a guardian and for protective services or placement. The department shall provide for a schedule of reimbursement for the cost of such proceedings based upon the ability to pay of the proposed ward or person to be protccted.

(b) If a person seeking to be the guardian of a proposed ward requests the assistance of a board designated under s. 55.02 or an agency designated by it in petitioning for guardianship or for protective service or placement, such assistance may be considered a service and may be charged for based upon the ability of such person to pay for the service.

(c) If requested by the court. the corporation counsel shall assist in conducting proceedings under this chapter.

(d) No guardian or temporary guardian may make a permanent protective placement of his or her ward unless ordered by a court under this section but may admit a ward to certain residential facilities under s. 55.05 *(5)* or make an emergency protective placement under s. 55.06 (11).

(2) The department, an agency, a guardian or any interested person may pctition the circuit court to provide protective placement for an individual who:

(a) Has a primary need for residential care and custody;

(b) Except in the case of a minor who is alleged to be developmentally disabled, has either been determined to be incompetent by a circuit court or has had submitted on the minor's behalf a petition for a guardianship;

(c) As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and

(d) Has a disability which is permanent or likely to be permanent.

(3) (a) The petition shall state with particularity the factual basis for the allegations specified in sub. (2).

(b) The petition under sub. (2) shall be based on personal knowledge of the individual alleged to need protective placement.

(c) The petition shall be filed in the county of residence of the person to be protected.

(4) A petition for guardianship if required under sub. (2) (b) must be heard prior to placement under this section. If incompetency has been determined under s. 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

(5) Notice of a pctition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon service of the notice the person sought to be protected shall be informed of the complete contents of the notice. The person serving the notice shall return a certificate to the circuit judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners. Notice shall also be served personally or by mail upon the person's guardian ad litem, legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. Notice shall also he served personally or by mail upon the department at least 10 days prior to the time set for hearing if the person sought to be protected may be placed in a center for the developmentally disabled. The department shall be allowed to submit oral or written testimony regarding such a placement at the hearing. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

(5m) A petition for protective placement of a person who has been admitted to a nursing home or a community–based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best intcrcsts of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

(6) Section 880.33 (2) applies to all hearings under this chapter except for transfers of placement under sub. (9) (b), (c) and (e). A person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with s. 757.48 (1) present at all hearings under this chapter if the person docs not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by the guardian ad litem to the court. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235 (8). The subject individual, attorney or guardian ad litem shall have the right to present and cross--examine witnesses, including any person making an evaluation or review under sub. (8) (c).

(7) Except for emergency placement or temporary placement under subs. (11) and (12), before placement may be ordered under this chapter the court or jury must find by clear and convincing evidence that the individual to be placed is in need of placement as provided in sub. (2).

(8) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in s. 49.001 (6) shall make a recommendation for placement. If the court is considering placement of the individual in a center for the developmentally disabled, the court shall request a statement from the department regarding whether the placement is appropriate for the person's needs and whether it is consistent with the purpose of the center under s. 51.06 (1) unless testimony was provided by the department under sub. (5). A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or attorney at least 96 hours in advance of the hearing to determine placement. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

(a) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

or protective placement facility. The pcrson making placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations and the basis for emergency placement. The statement shall be filed with the director of the facility and shall also be filed with any petition under sub. (2). At the time of placement the individual shall be informed by the director of the facility or the director's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her imtncdiatc fatnily and 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 director or designee shall also provide the individual with a copy of the statement by the person making emergency placement.

(am) Whoever signs a statement under par. (a) knowing the information contained therein to be false is guilty of a Class H felony.

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

(am) Whoever signs **a** statement under par. (a) knowing the information contained therein to **be** false may he fined **not** more than **$5,000 or** imprisoned for not more than **7** years and *6* months or both.

(ar) **A** person who acts in accordance with this subsection is not liable for any actions performed in good faith.

(b) Upon detention, a petition shall be filed under sub. (2) by the person making such emergency placement and a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for protective placement under sub. (2). The sheriff or other person making placement under par. (a) shall provide the individual with written notice and orally inform him or her of the time and place of the preliminary hearing. If the detainee is not under guardianship, a petition for guardianship shall accompany the placement petition, except in the case of a minor who is alleged to be developmentally disabled. In the event that protective placement is not appropriate, the court may elect to treat a petition for placement as a petition for commitment under s. 51.20 or 51.45 (13).

(c) Upon a finding of probable cause under par. (b), the court may order temporary placement **up** to 30 days pending the hearing for a permanent placement, or the court may order such protective services as may be required.

(d) **A** law enforcement agency, fire department, county department designated under s. 55.02 or an agency designated by that county department shall designate at least one employee authorized to take an individual into custody under this subsection who shall attend the in–service training on emergency detention and emergency protective placement 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 designated employee's jurisdiction offers an in–service training program.

(12) When a ward lives with the guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family cmergency. Such placement may be made for not more than 30 days but the court may upon application grant an additional period not to exceed 60 days in all. The application shall include such infonnation as the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

(14) Prior to discharge from a protective placement the appropriate board which is responsible for placement shall review the need for provision of continuing protective services or for continuation of full or limited guardianship or provision for such guardianship if the individual has no guardian. Recommendation shall be made to the court if the recommendation includes a course of action for which court approval would be required. Prior to discharge from any state institute or center for the developmentally disabled, the department shall make such review under s. 51.35.

(15) A guardian of a ward placed under this section shall have the duty to take reasonable steps to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. Notice of discharge under s. 51.35 (4) shall be given to the guardian.

(16) Placements to centers for the developmentally disabled and discharges from such institutions shall be in compliance with s. 51.35 (4).

(17) (a) Any records of the court pertaining to protective services or placement proceedings, including evaluations. reviews and recommendations prepared under sub. (8) (c), are not open to public inspection but are available to:

1. The subject of the proceedings and the subject's guardian at all times.

2. The subject's attorney or guardian ad litem, without the subject's consent and without modification of the records, in order to prepare for any court proceedings relating to the subject's protective services or placement or relating to the subject's guardianship.

3. Other persons only with the infonned written consent of the subject as provided in s. 51.30 (2) or under an order of the court that maintains the records.

(b) If the subject is an adult who has been adjudged incompetent under ch. 880 or is a minor, consent for release of information from and access to the court records may be given only as provided in s. 51.30 (5).

(c) All treatment and service records pertaining to a person who is protected under this chapter or for whom application has been made for protection under this chapter are confidential and privileged to the subject. Section 51.30 governs access to treatment and service records.

(18) An appeal may be taken to the court of appeals from a final judgment or final order under this section within the time period specified in s. 808.04 (3) and 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.

History: 1973 c. 284: 1975 c. 41; 1975 c. 94 s. 3: 1975 c. 189 s. 99 (2); 1975 c. 393,421,422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26,299,428; 1977 c. 449 s. 497; 1979 c. 32 s. **92 (1)**; 1979 c. 110 s. 60 **(1)**; 1979 c. 221; 1981 c. 314 **s.** 146; 1981 c. 379; 1983 8.27; 1983 a. 189 **s.** 329 **(19)**; 1983 a. 219: 1985 a. 29 **ss.** 1143.3202 (23); 1987 a. 366: 1989 a. 31, 359: 1991 a. 269: 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237,283; 2001 a. 109.

A "common sense" finding of incompetency was insufficient for placement under this section. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. Guardianship & Protective Placement of Shaw. *87* Wis. 2d 503, 275 N.W.2d 143 (Ct. **App.** 1979).

There must be an annual review of each protective placement by a judicial officer. The requirements of **ss.** 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. *55.06* (9) **(d)** and (e). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65,362 N.W.2d 104 (1985).

A court's finding of limited incompetence under ch. 880 fulfills the incompetency requirement for protective placement under this section. Matter of Guardianship of K.H.K. 139 Wis. 2d 190, 407 N.W.2d 281 (Ct. App. 1987).

When a placement extended past the 30–day limit under sub. (11) (c) before a final hearing was held, the court lost authority to extend the placement. In Matter of Guardianship of N. N. I40 Wis. 2d 64,409 N.W.2d 388 (Ct. **App.** 1987).

A county's duty under sub. (9) (a) to provide the least restrictive environment is not limited according to funds available through state and federal funds and those that the county appropriates as matching funds. Protective Placement of D.E.R. 155 Wis. 2d 240,455 N.W.2d 239 (1990).

A court may order an agency to do planning and implementation work necessary to fulfill the obligation to order placement conforming to sub. **(9)** (a) and s. 51.61 (1) (e). In Matter of J.G.S. 159 Wis. 2d 685, 465 N.W.2d 227 (Ct. **App.** 1990).

Sub. (11) (c) required dismissal of the proceedings for failure **to** hold a permanent placement hearing within 30 days of the probable cause hearing; immediate refiling of the petition and emergency detention following dismissal without prejudice was impermissible. State ex. rel Sandra D. v. Getto, 175 Wis. **2d** 490, 498 N.W.2d 893 (Ct. **App.** 1993).

A guardian of a person: who became incompetent after voluntarily entering a nursing home with I6 or more beds. may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520. 525 N.W.2d 268 (1995).

An emergency protective placement under sub. (11) must be based on personal observation by one of the individuals listed in sub. (11) (a). Costs could not be assessed against the subject of an emergency placement proceeding that was outside the statutory guidelines. Ethelyn I.C. v. Waukesha County, 221 Wis. 2d 109, 584 N.W.2d 211 (Ct. App. 1998).

The statutory provisions for an interested person's Formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence. or raise evidentiary objections. **A** court could consider such participation helpful and, in its discretion. could allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d I, 586 N.W.2d 52 (Ct. APP. 1998).

A circuit court must hold some form ofhearing on the record. either a full due process hearing or a summary hcaring, to continue a protective placement. The circuit court must also make findings based on the factors enumerated in sub. (2) in support of the need for continuation. County of Dunn v. Goldie H. 2001 WI 102,245 Wis. 2d 538,629 N.W.2d 189.

A circuit court loses competence if the hearine under s. 55.06(11) (b) is not held within 72 hours after the person is first taken into custody. The filing of a new petition does not start the clock anew, Kindcare, Inc. v. Judith G. 2002 WI App 36,250 Wis. 2d 817.640 N.W.2d 839.

In protective placements under **sub.** (9) (a). counties must make an affirmative showing of a good faith, reasonable effort to find an appropriate placement and to secure funding to pay for an appropriate placement. Counties bear the burden of showing whether funds are available and whether appropriate *placements* may be developed within the limits of required funds. Dunn County v. Judy K. 2002 WI 87, ___ Wis. 2d ____, 647 N.W.2d 799.

Sub. (17) requires the closing of all records filed with respect to ch. 55 proceedings, including *tlie* index, docket, and files maintained by the register in probate. 67 Atty. Gen. 130.

Under sub. (1) (c), the duty of the corporation counsel is to assist the court and not to act as counsel for petitioning private parties. Under sub. (9) (a). the court should order protective placement in an existing facility. 68 Atty. Gen. 97.

Protective placements arc discussed. 72 Atty. Gen. 194.

"Residence" *under* s. 55.06 (3j *(c)* is defined in s. 49.01 (8g). 76 Atty. Gen. 103.

New legal protection for persons with mental handicaps. Greenley and Zander. WRB April, 1986.

Guardianships and Protective Placcments. Viney. Wis. Law. Aug. 1991.

Guardianships and Protective Placements in Wisconsin After Agnes *T.* Fennell. Wis. Law. May 1995.

55.07 **Patients' rights. (1)** The rights and limitations upon rights, procedures for enforcement of rights and penalties prescribed in s. 51.61 apply to persons who receive services under this chapter, whether on a voluntary or involuntary basis.

(2) **A** parent who has been denied periods of physical placement under **s.** 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with respect to access to a child's records under this chapter.

History: 1977 c. 428: 1987 a. 355.

A guardian has general authority to consent to medication for a ward. but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. **OAG 5-99.**

CHAPTER 146
MISCELLANEOUS HEALTH PROVISIONS

146.81 Health care records; definitions.
146.815 Contents of certain patient health care records.
146.817 Preservation of fetal monitor tracings and microfilm copies
146.819 Preservation or destruction of patient health care records.
146.82 Confidentiality ofpatient health care records.
146.83 Access to patient health care records.
146.835 Parents denied physical placement rights.
146.836 Applicability
146.84 Violations related to patient health care records
146.885 Acceptance of assignment for medicare.
146.89 Volunteer health care provider program.
146.905 Reduction in fees prohibited.
146.91 Long–temi care insurance.
146.93 Primary health care program.
146.95 Patient visitation.
146.99 Assessments.
146.995 Reporting of wounds and bum injuries.
146.997 Health care worker protection..

146.81 Health care records; definitions. In ss. 146.81 to 146.84:

(1) "Health care provider" means any of the following:

(a) A nurse licensed under ch. 441.

(b) A chiropractor licensed under ch. 446.

(c) A dentist licensed under ch. 447.

(d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

(dg) A physical therapist licensed under subch. III of ch. 448.

(dr) A podiatrist licensed under subch. IV of ch. 448.

(em) A dietitian certified under subch. V of ch. 448.

(eq) An athletic trainer licensed under subch. VI of ch. 448.

(es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

(f) An optometrist licensed under ch. 449.

(fm) A pharmacist licensed under ch. 450.

(g) An acupuncturist certified under ch. 451.

(h) A psychologist licensed under ch. 455.

(hg) ,A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

(hm) A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(hp) **A** massage therapist or bodyworker certified under ch. 460.

NOTE: Par.(hp) is shown as amended cff. 3–1–03 by 2001 Wis. Act 74. **Prior to 3–1–03 it reads:**

(hp) A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

(i) A partnership of any providers specified under pars.(a) to

(j) A corporation or limited liability company of any providers specified under pars.(a) to (hp) that provides health care services.

(k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

(L) A hospice licensed under subch. IV of ch. 50.

(m) An inpatient health care facility, as defined in s. 50.135 (1).

(n) A community–based residential facility, as defined in s. 50.01 (lg).

(p) A rural medical center, as defined in s. 50.50 (11).

(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

(a) The name of the patient whose record is being disclosed.

(b) The type of information to be disclosed.

(c) The types of health care providers making the disclosure.

(d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.

(e) The individual, agency or organization to which disclosure may be made.

(f) The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.

(h) The time period during which the consent is effective.

(3) "Patient" means a person who receives health care services from a health care provider.

(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under s. 302.388 (2).

(5) "Person authorized by the patient" means the parent, guardian or legal custodian of a minor patient, as defined in s. 48.02 (8) and (1 l), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n), the guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4), the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535: 1985 a. 315: 1987 a. 27.70.264: , 1987 a. 399 ss. 403br, 491r: 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 **a.** 27, 32, 105, 112, 183, 385,443,496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 **a.** 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 **a.** 38, 70, 74, 80, 89.

146.815 Contents of certain patient health care records. (1) Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient's occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient's usual occupation.

(2) (a) If a hospital inpatient's health problems may be related to the inpatient's occupation or past occupations, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient's health problems may be related to the occupation or past occupations of the inpatient's parents, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(3) The department shall provide forms that may be used to record information specified under sub.(2) and shall provide guidelines for determining whether to prepare the occupational history required under sub.(2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

History: 1981 c. 214.

146.817 Preservation of fetal monitor tracings and microfilm copies. (1) In this section, "fetal monitor tracing" means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

(2) (a) Unless a health care provider has first made and preserved a microfilm copy of a patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the patient's fetal monitor tracing only if **35** days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient's fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient's fetal monitor tracing only if **35** days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars.(a) and (b) shall be sent to the patient's last–known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within **30** days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.

History: 1987 a. 27,399,403.

146.819 Preservation or destruction of patient health care records. (1) Except as provided in sub.(4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with ss. **146.81** to **146.835.**

(b) Provide for the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par.(a), and for the deletion or destruction of some of the records, as specified in par.(b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last–known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. **985,** a class **3** notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice **was** located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least **35** days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, to the last–known address of the patient to whom the records pertain or the last–known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under ch. **985,** a class **3** notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) **A** community–based residential facility or nursing home licensed under s. **50.03.**

(b) **A** hospital approved under s. **50.35.**

(c) **A** hospice licensed under s. **50.92.**

(d) **A** home health agency licensed under s. **50.49 (4).**

(f) **A** local health department, as defined in s. **250.01 (4),** that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

History: 1991 a. 269; 1993 a. 27; 1999 a. 9.

Cross Reference: See also ch. **Med 21,** Wis. adm. **code.**

146.82 Confidentiality of patient health care records.

(1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. **146.995, 253.12 (2) or 979.01 or** testimony authorized under s. **905.04 (4)** (h).

(2) ACCESS WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. **146.50,** including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for billing, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To a county agency designated under s. **46.90 (2) or** other investigating agency under s. **46.90** for purposes of s. **46.90 (4)** (a) and **(5)** or to the county protective services agency designated under s. **55.02** for purposes of s. **55.043.** The health care provider may release information by initiating contact with the county agency or county protective services agency without receiving a request for release of the information from the county agency or county protective services agency.

8. To the department under s. 255.04. The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. 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. 9. 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 a person with developmental disabilities, as defined under s. 51.62 (1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with 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, as defined in s. 51.01 (5) (a), 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. 9. 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. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. 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 are specified in subd. 9. 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.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, if the patient files a submission of controversy under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 *(7)*.

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply: a. The employee or agent has responsibility for preparation or storage of patient health care records. b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under s. 940.22.

14. To a representative of the board on aging and long-term care, in accordance with s. 49.498 (5) (e).

15. To the department under s. 48.60 (5) (c), 50.02 *(5)* or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 48.60 *(5)* (a), 50.035 (5) (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long-term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long-term care facility, as specified in s. 16.009 (4) (b).

17. To the department under s. 50.53 (2).

18. Following the death of a patient, to a coroner, deputy coroner, medical examiner or medical examiner's assistant, for the purpose of completing a medical certificate under s. 69.18 (2) or investigating a death under s. 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or a secured correctional facility, including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, to the foster parent or treatment foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.

19. To an organ procurement organization by a hospital pursuant to s. 157.06 *(5)* (b) 1.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain

prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under **s.** 302.388 **(4).**

(b) Except as provided in **s.** 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par.(a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released.

(c) Notwithstanding sub.(1), patient health care records shall be released to appropriate examiners and facilities in accordance with ss. 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) and 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.

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

(3) REPORTS MADE WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(b) Notwithstanding sub.(1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(c) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215,233, 380, 399; 1989 a. 31, 102,334,336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169,417; 1997 a. 35, 114, 231, 272, 292, 30.5; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105.

Because under s. 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMVWI trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fiaud investigation under s. 46.25 [now s. 49.22] may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. State v. Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (1996).

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. State v. Thompson, 222 Wis. 2d 179,585 N.W.2d 905 (Ct. App. 1998).

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. (2) provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician–patient privilege and was subject to release by "lawful court order." Crawford v. Care Concepts, Inc. 2001 WI App 45, 243 Wis. 2d 119, 625 N.W.2d 876. Disclosure of patient health care records in Wisconsin. Lehner, WBB Aug. 1984.

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

146.83 Access to patient health care records. (1) Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub.(3m).

(c) Receive a copy of the health care provider's X–ray reports or have the X–rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub.(3m).

(1m) (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent.

(b) The health care provider under par.(a) may be charged reasonable costs for the provision of the patient's health care records.

(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in **s.** 50.135 (1), or upon the first provision of services by the health care provider.

(3) The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name **of** the inspecting person, the time and date of inspection and identify the records released for inspection.

(3m) (a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub.(1) (b) for duplicate patient health care records and under sub.(1) (c) for duplicate X–ray reports or the referral of X–rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors: 1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies. 2. The varying cost of retrieval of records, based on the different media on which the records are maintained. 3. The cost of separating requested patient health care records from those that are not requested. 4. The cost of duplicating requested patient health care records. 5. The impact on costs of advances in technology.

(b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par.(a) to account for increases or decreases in actual costs.

(4) No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in **s.** 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct **an** investigation or prosecution.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27,445; 1997 a. 157; 2001 a. 109.

Sub. (1) (b) does not preclude certification of a class action in a suit **to** recover unreasonable fees charged for copies of health care records. Cruz v. All Saints Healthcare System Inc. 2001 WI App 67,242 Wis. 2d 432,625 N.W.2d 344.

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under **s.** 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under **s.** 146.82 or 146.83.

History: 1987 a. 355.

146.836 Applicability. Sections 146.815, 146.82, **146.83** (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

History: 1999 a. 78.

146.84 Violations related to patient health care records.

(1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) A custodian of records incurs no liability under par.(bm) for the release of records in accordance with **s.** 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $1,000 and costs and reasonable actual attorney fees.

(c) ***An*** individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with **s.** 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

(2) 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 s. 146.82 or 146.83 (1) under false pretenses.

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates s. 146.83 (4).

(b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than $1,000 for each violation.

(c) Whoever intentionally discloses confidential information in violation of s. 146.82, 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.

(3) DISCIPLINE OF EMPLOYEES. Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended without pay.

(4) EXCEPTIONS. This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

History: 1991 a. 39; 1993 a. 445; 1999 a. 9, 79.

Sub.(1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. Cruz v. All Saints Healthcare System, Inc. 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344.

146.885 Acceptance of assignment for medicare. The department shall annually provide aging units, as defined in s. 46.82 (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.

History: 1989 a. 294, 359; Stats. 1989 s. 146.885; 1991 a. 235.

146.89 Volunteer health care provider program. **(1)** In this section, "volunteer health care provider" means an individual who is licensed as a physician under ch. 448, dentist under ch. 447, registered nurse, practical nurse or nurse–midwife under ch. 441, optometrist under ch. 449 or physician assistant under ch. 448 or certified as a dietitian under subch. V of ch. 448 and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub.(3).

(2) (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency to the department of administration and that department approves the application. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub.(2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par.(b) without charge at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub.(2) (a).

(b) The nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider.

(c) The nonprofit agency may not provide emergency medical services, hospitalization or surgery, except as provided in par.(b) 8.

(d) The nonprofit agency shall provide health care services primarily to low–income persons who are uninsured and who are not recipients of any of the following:

2. Medical assistance under subch. IV of ch. 49.
3. Medicare under 42 USC 1395–1395ccc.

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health and family services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23.

146.905 Reduction in fees prohibited. **(1)** Except as provided in sub.(2), a health care provider, as defined in s. 146.81 (1), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

146.91 Long–term care insurance. **(1)** In this section, "long–term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long–term care insurance, the office of the commissioner of insurance, the board on aging and long–term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long–term care insurance, based on the purchasers' ability to pay.

(b) Reinsuring by the state of policies issued in this state by long–term care insurers.

(c) Allowing persons to retain liquid assets in excess of the amounts specified in s. 49.47 (4) (b) 3g., 3m. and 3r., for purposes of medical assistance eligibility, if the persons purchase long–term care insurance.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub.(2).

(5) In designing the program, the department shall consult with the federal department of health and human services to determine the feasibility of procuring a waiver of federal law or regulations that will maximize use of federal medicaid funding for the program designed under sub.(2).

(6) The department, with the advice of the council on long–term care insurance, may examine use of tax incentives for the sale and purchase of long–term care insurance.

History: 1987 a. 27; 1989 a. 56.

146.93 Primary health care program. (1) (a) From the appropriation under s. 20.435 (4) (gp), the department shall maintain a program for the provision of primary health care services based on the primary health care program in existence on June 30, 1987. The department may promulgate rules necessary to implement the program.

(c) The department shall seek to obtain a maximum of donated or reduced–rate health care services for the program and shall seek to identify and obtain a maximum of federal funds for the program.

(2) The program under sub.(1) (a) shall provide primary health care, including diagnostic laboratory and X–ray services, prescription drugs and nonprescription insulin and insulin syringes.

(3) The program under sub.(1) (a) shall be implemented in those counties with high unemployment rates and within which a maximum of donated or reduced–rate health care services can be obtained.

(4) The health care services of the program under sub.(1) (a) shall be provided to any individual residing in a county under sub.(3) who meets all of the following criteria:

(a) The individual is either unemployed or is employed less than 25 hours per week.

(b) The individual's family income is not greater than 150% of the federal poverty line, as defined under 42 USC 9902 (2).

(c) The individual does not have health insurance or other health care coverage and is unable to obtain health insurance or other health care coverage.

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1999 a. 9.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in s. 155.01 (7).

(b) "Inpatient health care facility" has the meaning given in s. 252.14 (1) (d).

(c) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) PATIENT–DESIGNATED VISITORS. (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par.(b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109.

146.99 Assessments. The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in s. 50.33 (2), a total of $1,500,000, in proportion to each hospital's respective gross private–pay patient revenues during the hospital's most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under s. 20.435 (4) (gp).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1999 a. 9.

146.995 Reporting of wounds and burn injuries. (1) In this section:

(a) "Crime" has the meaning specified in s. 949.01 (1).

(b) "Inpatient health care facility" has the meaning specified in s. 50.135 (1).

(2) (a) Any person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par.(b): 1. A gunshot wound. 2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime. 3. Second–degree or 3rd–degree burns to at least 5% of the patient's body or, due to the inhalation of superheated air, swelling of the patient's larynx or a burn to the patient's upper respiratory tract, if the person has reasonable cause to believe that the bum occurred as a result of a crime.

(b) For any mandatory report under par.(a), the person shall report the patient's name and the type of wound or burn injury involved as soon as reasonably possible to the local police department or county sheriffs office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than $500.

(3) Any person reporting in good faith under sub.(2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub.(2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient's name and type of wound or burn injury have been previously reported under sub.(2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

History: 1987 a. 233; 1991 a. 39; 1993 a. 27.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Disciplinary action" has the meaning given in s. 230.80 (2).

(c) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community–based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447. 4. A physician, podiatrist, perfusionist, or physical therapist licensed under ch. 448.

NOTE: **Subd. 4 is shown below as affected by 2001 Wis. Acts 70 and 89, eff. 4–1–04. 4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.**

5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.

6. A dietician certified under subch. V of ch. 448.

7. An optometrist licensed under ch. 449.

8. A pharmacist licensed under ch. 450.

9. An acupuncturist certified under ch. 451.

10. A psychologist licensed under ch. 455.

11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

12. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Suhd. 13. is shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads: 13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.

15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. **A** hospice licensed under subch. IV of ch. 50 19. A rural medical center, as defined in s. 50.50 (11). 20. A home health agency, as defined in s. 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard– setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard–settingbody and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard–setting body that receives a report under par.(a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par.(a) 1. or **2.** has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard–setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par.(a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par.(a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) on that person's behalf.

(c) For purposes of pars.(a) and (b), an employee is not acting in good faith if the employee reports any information under sub.(2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub.(2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub.(2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par.(b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the department under s. 106.54 (6). If the department finds that a violation of sub.(3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32 (6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the personnel commission under s. 230.45 (1) **(L).** If the personnel commission finds that a violation of sub.(3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par.(a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub.(3) may be required to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation and not more than $10,000 for a violation committed within 12 months of 2 or more previous violations. The 12–month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than $100 for each offense.

History: 1999 a. 176,186; 2001 **a.** 38, 70, 74, 89, 105.

CHAPTER 252
COMMUNICABLE DISEASES

252.10 Public health dispensaries.
252.14 Discrimination related to acquired immunodeficiency syndrome
252.15 Restrictions on use of a test for HIV.

252.10 Public health dispensaries. (1) A local health department may request from the department certification to establish and maintain a public health dispensary for the diagnosis and treatment of persons suffering from or suspected of having tuberculosis. Two or more local health departments may jointly establish, operate and maintain public health dispensaries. The department shall certify a local health department to establish and maintain a public health dispensary if the local health department meets the standards established by the department by rule. The department of health and family services may withhold, suspend or revoke a certification if the local health department fails to comply with any rules promulgated by the department. The department shall provide the local health department with reasonable notice of the decision to withhold, suspend or revoke certification. The department shall offer the local health department an opportunity to comply with the rules and an opportunity for a fair hearing. Certified local health departments may contract for public health dispensary services. If the provider of those services fails to comply, the department may suspend or revoke the local health department's certification. The department may establish, operate and maintain public health dispensaries and branches in areas of the state where local authorities have not provided public health dispensaries.

(6)(a) The state shall credit or reimburse each dispensary on an annual or quarterly basis for the operation of public health dispensaries established and maintained in accordance with this section and rules promulgated by the department.

(b) The department shall determine by rule the reimbursement rate under par. (a) for services.

(g) The reimbursement by the state under pars. (a) and (b) shall apply only to funds that the department allocates for the reimbursement under the appropriation under s. 20.435 (5) (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries, local health departments, physicians or advanced practice nurse prescribers.

(9) Public health dispensaries shall maintain such records as are required by the department to enable them to carry out their responsibilities designated in this section and in rules promulgated by the department. Records may be audited by the department.

(10) All public health dispensaries and branches thereof shall maintain records of costs and receipts which may be audited by the department of health and family services.

History: 1971 c. 81; 1971 c. 211 s. 124; 1973 c. 90; 1975 c. 39, 198,224; 1975 c. 413 ss. 2, 18; Stats. 1975 s. 149.06; 1977 c. 29; 1981 c. 20 ss. 1446, 2202 (20) *(c)*, 1983 a. 27; 1985 a. 29; 1991 a. 39, 160; 1993 a. 27 ss. 406, 407, 409, 411 to 414; Stats. 1993 s. 252.10, 1993 a. 443; 1995 a. 27 ss. 6318, 9126 (19), 9145 (1); 1997 a. 27, 75, 156, 175,252; 1999 a. 9, 32, 186.

Cross Reference: See also ch. HFS 145, Wis. adm. code. .

252.14 Discrimination related to acquired immunodeficiency syndrome. (1) In this section:

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(am) "Fire fighter" has the meaning given in s. 102.475 (8) (b).

(ar) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician licensed under subch. II of ch. 448.

4c. A perfusionist licensed under subch. II of ch. 448.

NOTE: Subd. 4c. is created eff. 1–1–03 by 2001 Wis. Act 89.

4e. A physical therapist licensed under subch. III of ch. 448.

NOTE: Subd. 4e. is amended eff. 4–1-04 by 2001 Wis. Act 70 to read: 4e. A physical therapist or physical therapist assistant licensed under subch. 111 of ch. 448.

4g. A podiatrist licensed under subch. IV of ch. 448.

4m. A dietitian certified under subch. V of ch. 448.

4p. An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

4q. An athletic trainer licensed under subch. VI of ch. 448.

5. An optometrist licensed under ch. 449.
6. A psychologist licensed under ch. 455.
7. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Suhd. 7. is shown as amended eff. 11~1–02 by 2001 Wis. Act 80. Prior to 11–1–02 it reads:

7. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

8. A speech–language pathologist or audiologist licensed under subch, 11 of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
9. An employee or agent of any provider specified under subds. 1. to 8.
10. A partnership of any provider specified under subds. 1. to 8.
11. A corporation of any provider specified under subds. 1. to 8. that provides health care services.
12. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
13. An emergency medical technician licensed under s. 146.50 (5).
14. A physician assistant licensed under ch. 448. 15. A first responder.

(c) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(d) "Inpatient health *care* facility" means a hospital, nursing home, community–based residential facility, county home, county mental health complex or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(2) No health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, home health agency, inpatient health care facility or person who has access to a validated test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(am) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, refuse to provide services to the individual.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(bm) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, provide services to the individual at a standard that is lower than that provided other individuals with like service needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired

immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating Sub. **(2)** is liable to the patient for actual damages and costs, plus exemplary damages of up to $5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

History: 1989 **a. 201;** 1991 a. 32, 39, 160, 189, 269, 315; 1593 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 **a.** 490 s. 143; 1993 **a.** 491, 495; 1995 **a.** 27 *ss.* 6322, 9145 (I); 1997 a. 27, 35, 67, **75,** 175; 1999 a. 9, 32, 180; 2001 a. 70, 80, 89.

252.15 Restrictions on use of a test for HIV.

(1) DEFINITIONS In this section: (ab) "Affected person" means an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, health care provider, employee of a health care provider or staff member of a state crime laboratory.

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(af) "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

(aj) "Fire fighter" has the meaning given in s. 102.475 **(8)** (b).

(am) "Health care professional" means a physician who is licensed under ch. 448 or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(ar) "Health care provider" means any of the following: 1. **A** person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 1. is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads: 1. A person *or* entity that is specified in s. 146.81

(1), but does not include a massage therapist or bodyworker issued a license of registration under subch. XI of cb. 440.

2. **A** home health agency.

3. An employee of the Mendota mental health institute or the Winnebago mental health institute.

(cm) "Home health agency" has the meaning given in s. 50.49 (1) (a).

(d) ''Informed consent for testing or disclosure'' means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) "Informed consent for testing or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

(eg) "Relative" means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(em) "Significantly exposed" means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an eye, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(fm) "Universal precautions" means measures that a health care provider, an employee of a health care provider or other individual takes in accordance with recommendations of the federal centers for disease control for the health care provider, employee or other individual for prevention of HIV transmission in health– care settings.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. lg., a health care provider who procures, processes, distributes or uses a human body part or human tissue donated as specified under **s.** 157.06 (6) (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

Ig. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to testing under subd. I. is unavailable, the requirement of subd. 1. does not apply.

2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

3. The medical director of a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or non-antigenic products of HIV or **an** antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. **A** health care provider may subject an individual to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual's guardian, if the individual is adjudicated incompetent under ch. 880; from the individual's parent or guardian, if the individual is under 14 years of age; or from the individual's closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

6. **A** health care professional acting under an order of the court under subd. 7. or s. 938.296 (4) or *(5)* or 968.38 (4) or *(5)* may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding

Sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employee of a health care provider who, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; or a staff member of a state crime laboratory who, during the course of handling or processing specimens of body fluids or tissues of an individual; is significantly exposed to the individual may subject the individual's blood to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and may receive disclosure of the results.

ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. A physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this determination or certification. The information that is provided to a physician to document the occurrence of a significant exposure and the physician's certification that an affected person has been significantly exposed, under this subd. 7. ak., shall be provided on a report form that is developed by the department of commerce under s. 101.02 (19) (a) or on a report form that the department of commerce determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

am. The affected person submits to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of HJV, antigen or non-antigenic products of HIV or an antibody to HIV.

ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including that individual, without his or her con sent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the record does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and to disclose the results to that person. The person who is certified under subd. 7. ak. to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

b. Upon receipt of a request and certification under the requirements of this subdivision, a district attorney shall, as soon as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care professional, and to disclose the results of the test or tests as specified in subd. 7. c.

c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

d. The court is not required to order the individual to submit to a test under subd. 7. c. if the court finds substantial reason relating to the life or health of the individual not to do so and states the reason on the record.

7m. The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed. A record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

(am) 1. A health care provider who procures, processes, distributes or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

2. A health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall, in instances under those paragraphs in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care

instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. (5) (a) 2. to 19. or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(bm) The health care provider that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under par. (a) 3. shall provide the test subject and the test subject's guardian, if the test subject is incompetent under ch. 880, with all of the following information:

1. A statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

2. A statement of explanation that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. *(5)* (a) *2.* to 18. or a statement that the listing is available upon request.

(3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under Sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent to providing informed consent for disclosure under Sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) RECORD MAINTENANCE. A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under Sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained. A record that is made under the circumstances described in Sub. (2) (a) 7m. may not reveal the identity of the test subject.

(5) CONFIDENTIALITY OF TEST. (a) An individual who is the subject of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who is neither the individual nor the individual's health care agent may not, unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employee of a health care provider under subd. *2.* who prepares or stores patient health care records, as defined in s. 146.81 (4), for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under Sub. (2) (a), for any of the following purposes: a. Determining the medical acceptability of blood or plasma secured from the test subject. b. Notifying the test subject of the test results. c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 (6) (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 *(5)* or to other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV–infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13. To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under Sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or *(5)* (e) or 968.38 (4) (c) or *(5)* (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or

guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

18. To an affected person, under the requirements of Sub. (2) (a) 7.

19. If the test was administered to a child who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility, as defined in s. 938.02 (15m), including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (cj, or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child, or to an agency that placed the child or arranged for the placement of the child in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or arranged for the placement of the child in any of those placements, to the child's foster parent or treatment foster parent or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child is placed, as provided ins. 48.371 or 938.371.

NOTE: Subd. 19. is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2)(c).

20. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to the prisoner's patient health care records under s. 302.388, to the medical staff of a jail to whom the results are disclosed under s. 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner is being transferred, if the results are provided to the medical staff by the department of corrections as part of the prisoner's medical file, to a health care provider to whom the results are disclosed under s. 302.388 (2) (c) or (f) or the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 **(4).**

(b) A private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10. if he or she annually submits to the maintainer of his or her test results under Sub. (4) (c) a signed, written request that denial be made.

(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES. Notwithstanding s. 157.05, a corpse may be subjected to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall he ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the attending physician of the funeral director, coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employee of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employee has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED. NO person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV for self–use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED. NO person to whom the results of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV have been disclosed under Sub. (5) (a) or (5m) may disclose the test results except as authorized under Sub. (5) (a) or (5m).

(7) REPORTING OF POSITIVE TEST RESULTS. (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under s. 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 250.04 (1) or (2) (a).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under Sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HIV infections.

(c) Except as provided in Sub. (7m), a report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 252.05 with respect to persons for whom a diagnosis of acquired immuno-deficiency syndrome has been made.

(7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED. If a positive, validated test result is obtained from a test subject, the test subject's physician who maintains a record of the test result under Sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician to have been significantly exposed to the test subject, only after the physician has done all of the following:

(a) Counseled the test subject to inform any person who has been significantly exposed to the test subject.

(b) Notified the test subject that the name of any person known to the physician to have been significantly exposed to the test subject will be reported to the state epidemiologist.

(8) CIVIL LIABILITY. (a) Any person violating Sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to $1,000 for a negligent violation and up to $25,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under Sub. (2), (5) (a), (5m), (6) or (7) (c). A conviction under Sub. (2), (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) PENALTIES. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than $25,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than $1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m), 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.

(10) DISCIPLINE OF EMPLOYEES. Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298,359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190,252,395,491; 1995 a. 27 ss. 6323,9116 (5), 9126 (19); 1995 a. 77,275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74; s. 13.93 (2) (c).

No claim for a violation of Sub. (2) was stated when the defendants neither conducted HIV tests nor were authorized recipients of the test results. Hillman v. Columbia County, 164 Wis. 2d 376,474 N.W.2d 913 (Ct. App. 1991).

This section does not prevent a court acting in equity from ordering an HIV test where this section does not apply. Syring v. Tucker, 174 Wis. 2d 787, 498 N.W.2d 370 (1993).

This section has no bearing on a case in which a letter from the plaintiff to the defendant pharmacy contained a reference to a drug used only to treat AIDS, but did not disclose the results of an HIV test or directly disclose that the defendant had AIDS. Doe v. American Stores, Co. 74 F. Supp. 2d 855 (1999).

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions.
440.02 Bonds.
440.03 General duties and powers of the department.
440.035 General duties of examining boards and affiliated credentialing boards.
440.04 Duties of the secretary.
440.042 Advisory committees.
440.045 Disputes.
440.05 Standard fees.
440.055 Credit card payments.
440.06 Refunds and reexaminations.
440.07 Examination standards and services.
440.08 Credential renewal.
440.11 Change of name or address.
440.12 Credential denial, nonrenewal and revocation based on tax delinquency
440.13 Delinquency in support payments; failure to comply with subpoena or warrant.
440.14 Nondisclosure of certain personal information.
440.142 Reporting potential causes of public health emergency.
440.20 Disciplinary proceedings.
440.205 Administrative warnings.
440.21 Enforcement of laws requiring credential.
440.22 Assessment of costs.
440.23 Cancellation of credential; reinstatement.
440.25 Judicial review..

Cross **reference:** See also RL, Wis. adm. code.

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under s. 146.40 (4r) (am) **2.** or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll–free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible

in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub.(11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, 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 par.(am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (e).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath 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 credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued *to* any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that

he or she is certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) **A** person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in **s.** 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in **s.** 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also chs. RL 140,141, and 142, Wis. adm. code.

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in **ss.** 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 c. 418 ss. 24. 792: 1979 c. 34. 221. 337; 1981 c. 94; 1985 a. 29. 340; 1989 a. 31,340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 64723,9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312,313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10. 13: 1997 a. 311: 1999 a. 9. 32: 2001 a. 16, 66, 80.

Cross reference: See also RL, Wis. adm. code.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25, 793,929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27,191,237.

440.04 Duties of the secretary. The secretary shall: **(1)** Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in **s.** 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under **s.** 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in **s.** 440.982 and making investigations, conducting hearings and taking disciplinary action under **s.** 440.986. **A** person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16ss. 3269,3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee, after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29,418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264, 265,329, 399,403; 1989 a. 31, 229, 307, 316, 336,340,341,359; 1991 a. 39,269,278,315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16.

Cross reference: See also ch. RL 4, Wis. adm code.

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4, Wis. adm. code

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Cross reference: See also ch. RL 4, Wis. adm. code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 Wis. 2d 442,549 N.W.2d 452 (Ct. App. 1996).

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $185.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 of each year; $15.
24. Chiropractor: January 1 of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year; $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 46r. is created eff. 3–1–03 by 2001 Wis. Act 74.

48. Nurse, licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.

NOTE: Subd. 57m. is created eff. 4–1–04 by 2001 Wis. Act 70.

58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August 1 of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd-numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. 3–1–03 by 2001 Wis. Act 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd–numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $119.
70. Veterinarian: January 1 of each even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub. (2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL. (a) ***Generally.*** If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub. (2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may *summarily* deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) ***Applicability.*** This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: *See* also ch. RL 9, Wis. adm. code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 *(6)* (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191, 237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a name, social security number, telephone number, street address, post-office box number or 9-digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par. (a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. 66.

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 (7).

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02 (lr).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. 109.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 **(2)** or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31, 201; 1991 a. 39; 1993 a. 16, 27, 102, 107,490.

The constitutionality of sub.(3) **is upheld. Gandhi v. Medical Examining Board, 168** Wis. **2d 299,483** N.W.2d **295** (Ct. **App. 1992).**

A hearing is not required for **a complaint filed under this section. 68 Atty. Gen. 30.**

The "preponderance of the evidence" burden of proof under sub.(3) **does not violate the due process rights of a licensee. 75 Atty. Gen. 76.**

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross reference: See also ch. RL **8,** Wis. **adm. code.**

440.21 Enforcement of laws requiring credential. (1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 3, Wis. **adm code.**

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may he collected only as a

condition of reinstatement of the disciplined practitioner's credentials. State v. Dunn, 213 Wis. 2d 363,570 N.W.2d 614 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement. (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 450
PHARMACY EXAMINING BOARD

450.01 **Definitions.**
450.10 **Disciplinary proceedings; immunity; orders**
450.11 **Prescription drugs and prescription devices.**

450.01 Definitions. In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

450.10 Disciplinary proceedings; immunity; orders.

(1) (a) In this subsection, "unprofessional conduct" includes, but is not limited to:

1. Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license.

2. Violating this chapter or, subject to s. 961.38 (4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.

3. Practicing pharmacy while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.

4. Engaging in false, misleading or deceptive advertising.

5. Making a substantial misrepresentation in the course of practice which is relied upon by another person.

6. Engaging in conduct in the practice of the licensee which evidences **a** lack of knowledge or ability to apply professional principles or skills.

7. Obtaining or attempting to obtain compensation by fraud or deceit.

8. Violating any order of the board. (b) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the board may reprimand the licensee or deny, revoke, suspend or limit the license or any combination thereof of any person licensed under this chapter who has:

1. Engaged in unprofessional conduct.

2. Been adjudicated mentally incompetent by a court.

3. Been found guilty of an offense the circumstances of which substantially relate to the practice of the licensee.

(2) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license under sub. (1), the board may, for the violations enumerated under sub. (1), assess a forfeiture of not more than $1,000 for each separate offense. Each day of violation constitutes a separate offense.

(3) (a) In this subsection, "health care professional" means any of the following:

1. A pharmacist licensed under this chapter.

2. A nurse licensed under ch. 441.

3. A chiropractor licensed under ch. 446.

4. **A** dentist licensed under ch. 447.

5. A physician, physician assistant, podiatrist, physical therapist, occupational therapist or occupational therapy assistant licensed under ch. 448.

NOTE: Subd. 5. is amended eff. 4–1-04 by 2001 Wis. Act 70 to read: 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448.

5m. A dietitian certified under subch. V of ch. 448.

5q. An athletic trainer licensed under subch. VI of ch. 448.

6. An optometrist licensed under ch. 449.

7. **An** acupuncturist certified under ch. 451.

8. A veterinarian licensed under ch. 453.

9. A psychologist licensed under ch. 455.

10. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 10. is shown as amended eff. 11–1–02 by 2001 Wis. Act 80. Prior to 11–1-02 it reads: 10. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

11. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(b) Any health care professional who in good faith provides another health care professional with information concerning a violation of this chapter or ch. 961 by any person shall be immune from any civil or criminal liability that results from any act or omission in providing such information. In any administrative or court proceeding, the good faith of the health care professional providing such information shall be presumed.

(4) (a) The secretary may, in case of the need for emergency, action, issue general and special orders necessary to prevent or correct actions by any pharmacist under this section that would be cause for suspension or revocation of a license.

(b) Special orders may direct a pharmacist to cease and desist from engaging in particular activities.

History: 1985 **a.** 146; 1987 a. 264, 399; 1989 **a.** 31, 316; 1991 **a.** 39, 160; 1993 a. 222, 443; 1995 a. 27 s. 9145 (1); 1995 a. 448; 1997 **a.** 27, 67, 75, 175; 1999 **a.** 9, 32, 180; 2001 a. 70, 80.

Cross Reference: See also ch. Phar 10, *Wis.* adm. code.

450.11 Prescription drugs and prescription devices.

(1) DISPENSING. No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. **All** prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription order shall be immediately reduced to writing by the pharmacist and filed according to sub. (2).

(1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c) 4., a practitioner may transmit a prescription order electronically only if the patient approves the transmission and the prescription order is transmitted to a pharmacy designated by the patient.

(2) PRESCRIPTION ORDER FILE. Every prescription order shall be filed in a suitable book or file and preserved for at least 5 years. Subject to s. 961.38 (2), prescription orders transmitted electronically may be filed a

CHAPTER 455

PSYCHOLOGY EXAMINING BOARD

455.01 Definitions.
455.02 License required to practice; use oftitles.
455.03 Temporary practice.
455.04 Licensure of psychologists and private practice school psychologists.
455.045 Examinations.
455.06 Renewals.
455.065 Continuing education requirements.
455.07 Renewal fees.
455.08 Rules and code of ethics.
455.09 Denial. limitation. suspension, revocation and reprimand
455.10 Injunctive relief.
455.11 Penalty.

Cross-reference: See definitions in s. 440.01.
Cross Reference: See also Psy, Wis. adm. code.

455.01 Definitions. In this chapter:

(2) "Doctoral degree in psychology" means a doctoral degree in a study which involves the application of principles of the practice of psychology. A doctoral degree granted as the result of study involving one or more of the areas of psychological practice recognized by the American psychological association or in any other field recognized by the examining board shall be considered a doctoral degree in psychology.

(3) "Examining board" means the psychology examining board.

(3m) "Fee" means direct or indirect payment or compensation, monetary or otherwise, including the expectation of payment or compensation whether or not actually received.

(4) "Licensed psychologist" means a person holding a valid license under s. 455.04 (1).

(5) "Practice of psychology" means rendering to any person for a fee a psychological service involving the application of principles, methods and procedures of understanding, predicting and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; the methods and procedures of interviewing, counseling, psychotherapy, psychoanalysis and biofeedback; and the methods and procedures of constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion and motivation. The application of these principles and methods includes, but is not restricted to, all of the following:

(a) Psychological diagnosis, prevention and treatment of problems in behavioral, vocational, educational, emotional, sexual, neuropsychological and mental disorders.

(b) Treatment for alcohol and other substance abuse, disorders of habit and conduct, and the psychological and behavioral aspects of physical illness, accident or other disabilities.

(c) Any other activity authorized by statute or by rules promulgated by the examining board.

(6) "Psychotherapy" means the use of learning. conditioning methods and emotional reactions in a professional relationship to assist persons to modify feelings, attitudes and behaviors which are intellectually, socially or emotionally maladjustive or ineffectual.

(7) (a) A person makes a representation to be a psychologist when the person uses publicly any title or description of services incorporating the words "psychology", "psychological" or "psychologist", and when the person makes a declaration to be trained, experienced or an expert in the field of psychology and offers to engage or engages in the practice of psychology for any person for a fee.

(b) Nothing in this chapter restricts the use of the term "social psychologist" by any person who has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution, who has passed comprehensive examinations in the field of social psychology as part of the requirements for a doctoral degree or has had equivalent specialized training in social psychology and who has filed with the examining board a statement of the facts demonstrating compliance with this paragraph.

History: 1977 c. 192, 273, 418; 1989 a. 243; 1995 a. 188.

455.02 License required to practice; use of titles. **(1m)** LICENSE REQUIRED TO PRACTICE. No person may engage in the practice of psychology or the private practice of school psychology, or attempt to do so or make a representation as authorized to do so, without a license issued by the examining board.

(2m) EXCEPTIONS. A license under this chapter is not required for any of the following:

(a) A person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted by this state.

(b) A person providing psychological services as directed, supervised and inspected by a psychologist who has the power to direct, decide and oversee the implementation of the services provided.

(c) The performance of official duties by personnel of any of the armed services or federal health services of the United States.

(d) A person employed in a position as a psychologist or psychological assistant by an accredited college, junior college or university or other academic or research institution, if the person is performing activities that are a part of the duties for which he or she is employed, is performing those activities solely within the confines of or under the jurisdictions of the institution in which he or she is employed and does not render or offer to render psychological services to the public for a fee over and above the salary that he or she receives for the performance of the official duties with the institution with which he or she is employed. An individual acting under this paragraph may, without obtaining a license under s. 455.04 (1) or (4), disseminate research findings and scientific information to others, such as accredited academic institutions or governmental agencies, or may offer lecture services for a fee.

(e) A person pursuing a course of study leading to a graduate degree in medicine, social work, marriage and family therapy or professional counseling at an accredited college or university while working in a training program, if the person's activities and services constitute a part of his or her supervised course of study and the person is designated by a title that clearly indicates the training status appropriate to the person's level of training.

(f) A graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited college or university while working in a training program, if his or her activities and services constitute a part of the supervised course of study and he or she is designated by a title such as "psychological intern", "psychological trainee" or other title clearly indicating the training status appropriate to his or her level of training. The term "psychological intern" shall be reserved for persons enrolled in the doctoral program in psychology at an accredited college or university or engaged in a formal psychology internship program.

(g) **A** person certified by the department of public instruction to provide psychological or counseling services, if the person is performing activities that are a part of the duties for which he or she is employed, is performing those activities solely within the confines of or undcr the jurisdiction of the school district by which he or she is employed and does not render or offer to render psychological services to the public for a fee over and above the salary that he or she receives for the performance of the official duties with the school district by which he or she is employed.

(h) **A** person who has a doctoral degree in psychology and who has met the examining board's requirements for predoctoral supervised experience under s. Psy 2.09 (2), Wis. Adm. Code, while employed as a psychology resident by a clinic certified by the department of health and family services.

NOTE: Section Psy 2.09 (2), Wis. Adm. Code was repealed eff. 7–1–99 by rule published in Register, June, 1999, No. 522,

(i) **An** ordained member of the clergy of any religious denomination or sect who is associated with a church, synagogue or other religious organization, contributions to which are tax deductible for fcderal and statc income tax purposes, if the mcmbcr of the clergy is engaged in activities that are within the scope of his or her regular duties as a member of the clergy and that are not rendered to the public for a fee over and above the salary or other compensation that the member of the clergy receives for the performance of his or her official duties as a member of the clergy with the church, synagogue or religious organization with which he or she is associated.

(k) A person engaged in employment counseling or testing for other than therapeutic purposes.

(L) A mental health professional who has met all of the qualifications under s. HFS 61.96, Wis. Adm. Code, for employment as a mental health professional in an outpatient psychotherapy clinic certified by the department of health and family services under s. HFS 61.95, Wis. Adm. Code, if the person is performing activities that are a part of the duties for which he or she is employed by such a certified outpatient psychotherapy clinic and is performing those activities solely within the confines of or under the jurisdiction of the clinic by which he or she is employed.

(m) A person providing psychological services as an employee of a fcderal, statc or local govcrnmcntal agency, if the person is providing the psychological services as a part of the duties for which he or she is employed, is providing the psychological services solely within the confines of or under the jurisdiction of the agency by which he or she is employed and does not provide or offer to provide psychological services to the public for a fee over and above the salary that he or she receives for the performance of the official duties with the agency by which hc or she is employed.

(n) A person coordinating or participating in the activities of a nonprofit peer support group, if the person performs those activities solely within the confines of the peer support group and does not render or offer to render psychological services to the public for a fee.

(3m) Use OF TITLES. Only an individual licensed under s. 455.04 (1) may use the title "psychologist" or any similar title or state or imply that he or she is licensed to practice psychology, and only an individual licensed under s. 455.04 (4) may use the title "private practice school psychologist" or any similar title or state or imply that he or she is licensed to engage in the private practice of school psychology. Only an individual licensed under s. 455.04 (1) or (4) may represent himself or herself to the public by any description of services incorporating the word "psychological" or "psychology".

History: 1979 c. 162 ss. 30, 38 (7); *1989* a. 243; ***1995*** a. 27 ss. 9126 (19), 9145 (1); ***19958.*** 188; *1995* a. *225* s. *466: 1997* a. *35, 261; 2001* a.38, 104.

455.03 Temporary practice. A psychologist who is licensed or certified by a similar examining board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the examining board, are equivalent to or higher than the requirements for licensure as a psychologist in s. 455.04 (1) may offer services as a psychologist in this state for not more than 60 working days in any year without holding a license issued under s. 455.04 (1). The psychologist shall report to the examining board the nature and extent of his or her practice in this statc if it cxcccds 20 working days within a year.

History: 1989 a. 243.

455.04 Licensure of psychologists and private practice school psychologists. (1) The department shall issue a psychologist license to an individual who submits an application for the license to the department on a form provided by the department, pays the fee specified in **s.** 440.05 (1) or, if sub. (3) applies, the fee specified in s. 440.05 (2), and is found by the examining board to meet all of the following requirements:

(a) Be at least 18 years of age.

(b) Subject to ss. 111.321, 111.322 and 111.335, not have an arrest or conviction record.

(c) Hold a doctoral degree in psychology from a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or have had other academic training or specialized experience, which in the opinion of the board is equivalent thereto. The board may require examinations to determine the equivalence of such training and experience and may also require examinations for individuals holding doctoral degrees in psychology from non-American universities.

(d) Nave had at least one year of appropriate experience in psychological work under conditions satisfactory to the examining board in addition to satisfying par. (c). However, the examining board may not adopt rules requiring an internship.

(ej Pass the examination under **s.** 455.045 (1) (a). This paragraph does not apply to an applicant who is liccnscd as a psychologist in another state if the applicant submits proof of completion of continuing educational programs or courses approved under s. 455.065 (4) for the minimum number of hours required in the rules promulgated under s. 455.065 *(3).*

(f) Pass the examination under **s.** 455.045 (1) (b).

(3) The examining board may waive the requirements of sub. (1) (c) and (d) if a candidate holds a diploma of the American board of examiners in professional psychology, or holds a certificate or license of an examining board of some other state or territory or foreign country or province, if the standards of such other examining board are deemed by the members of this board to be equivalent to the standards of this state and like reciprocity is extended to holders of licenses issued by this state.

(4) The department shall issue a private practice school psychologist license to an individual who submits an application for the license to the department on a form provided by the department, pays the fee specified in s. 440.05 (1) and is found by the examining board to meet all of the following requirements:

(a) Be at least 18 years of age.

(b) Subject to ss. 111.321, 111.322 and 111.335, not have an arrest or conviction record.

(c) Have completed a program for the preparation of school psychologists resulting in a doctor of philosophy, doctor of psychology, doctor of education or education specialist degree, or consisting of a minimum of 60 graduate semester credits resulting in a master's degree in psychology.

(d) Submit written verification from the supervising psychologist or a school official or administrator that the applicant has successfully completed one year of experience or internship in school psychology under the supervision of a school psychologist licensed by the department of public instruction.

(e) Hold a regular license as a school psychologist issued by the department of public instruction.

(f) Pass the examination under s. 455.045 (2) (a). This paragraph does not apply to an applicant who is licensed as a private practice school psychologist in another state if the applicant submits proof of completion of continuing educational programs or

courses approved under s. 455.065 (4) for the minimum number of hours required in the rules promulgated under s. 455.065 (3).

(g) Pass the examination under s. 455.045 (2) (b).

(5) Applicants for licensure under subs. (1) and (4) may be required to appear before the examining board in person prior to licensure to allow the examining board to make such inquiry of them as to qualifications and other matters as it considers proper.

History: 1971 c. 213 s. 5; 1975 c. 198; 1977 c. 192; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 403; 1989 a. 243 ss. 6 to 9, 12, 13; 1995 a. 27 s. 9145 (1); 1995 a. 188; 1997 a. 27.

Cross Reference: See also chs. Psy 2 and 3, Wis. adm. code.

455.045 Examinations. (1) The examining board shall administer the following examinations for psychologist licensure at least semiannually at times and places determined by the examining board:

(a) A written examination on the practice of psychology.

(b) A written examination in the elements of practice essential to the public health, safety or welfare.

(2) The examining board shall administer the following examinations for private practice school psychologist licensure at least semiannually at times and places determined by the examining board:

(a) A written examination on the private practice of school psychology.

(b) A written examination in the elements of practice essential to the public health, safety or welfare.

(3) The examining board shall promulgate rules establishing standards for public notice of examinations and for acceptable performance on examinations under this section.

History: 1989 a. 243.

Cross Reference: See also ehs. Psy 2 and 3, Wis. adm. code.

455.06 Renewals. The renewal date and renewal fee for licenses issued under s. 455.04 (1) and (4) are specified under s. 440.08 (2) (a). An applicant for renewal of a license shall include with his or her application proof of completion of continuing education programs or courses approved under s. 455.065 (4) for the minimum number of hours required in the rules promulgated under s. 455.065 (1).

History: 1977 c. 29; 1979 c. 162; 1989 a. 243: 1991 a. 39; 1995 a. 188.

Cross Reference: See also ch. Psy 4, Wis. adm. code.

455.065 Continuing education requirements. The examining board shall do all of the following:

(1) Promulgate rules establishing the minimum number of hours of continuing education, the topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for renewal of a license and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses.

(3) Promulgate rules establishing the minimum number of hours of continuing education, the topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for the exemptions from the examination requirements under s. 455.04 (1) (e) and (4) (f) and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses.

(4) Approve continuing education programs and courses in accordance with the criteria established under subs. (1) and (3).

(5) Promulgate rules establishing the criteria for the substitution of uncompensated hours of professional assistance volunteered to the department of health and family services for some or all hours of continuing education credits required under subs. (1) and (3). The eligible substitution hours shall involve professional evaluation of community programs for the certification and recertification of community mental health programs, as defined in s. 51.01 (3n), by the department of health and family services.

History: 1989 a. 243; 1991 a. 39; 1993 a. 445; 1995 a. 27 s. 9126 (19); 1995 a. 188.

Cross Reference: See also s. Psy 4.02, Wis. adm. code.

455.07 Renewal fees. (2) The fee for renewal of a license under this chapter is specified under s. 440.08 (2) (a).

(3) The late renewal fees are specified under s. 440.08 (3) (a).

History: 1977 c. 29; 1991 a. 39; 1997 a. 35.

455.08 Rules and code of ethics. The examining board shall adopt such rules as are necessary under this chapter and shall, by rule, establish a reasonable code of ethics governing the professional conduct of psychologists. using as its model the "Ethical Standards of Psychologists", established by the American Psychological Association. The primary intent of this code shall be to assure that licensed psychologists limit their practices to those specialties in the field of psychology which they arc qualified to practice. Every person who holds a license to practice psychology in this state shall be governed and controlled by such code of ethics. A written statement of the code shall be made available to all applicants for licensing, as well as all licensed psychologists, when amendments are made to those standards. Nothing in this chapter shall be construed to authorize the psychologist to engage in the practice of medicine.

Cross Reference: See also Psy **and** ch. Psy 5, Wis. adm. code.

455.09 Denial, limitation, suspension, revocation and reprimand. (1) Subject to the rules promulgated under s. 440.03 (1), the examining board may deny an application for a license, or may by order suspend for a period not exceeding one year, limit, revoke or impose probationary conditions upon a license or reprimand a licensee if the applicant or licensee:

(a) Subject to ss. 111.321, 111.322 and 111.335, is a felon.

(b) Subject to ss. 111.321, 111.322 and 111.34, engaged in the practice of psychology or the private practice of school psychology while his or her ability to practice was impaired by alcohol or other drugs.

(c) Impersonates another person holding a license under this chapter or allows another person to use his or her license.

(d) Uses fraud or deception in applying for a license under this chapter.

(e) Accepts a commission, rebate or other form of fee for referring persons to other professionals.

(f) Engages in the willful, unauthorized communication of information received in professional confidence.

(g) Violates this chapter or any rule of professional conduct promulgated under this chapter.

(h) Is grossly negligent in the practice of his or her profession.

(2) A suspended license is subject to the requirements for renewal of the license under s. 440.08. The renewal of a suspended license does not entitle the licensee to any rights, privileges or authority conferred by the license while the license remains suspended.

(3) A revoked license may not be renewed. One year from the date of revocation of a license under this chapter, application may be made for reinstatement. The examining board may accept or reject an application for reinstatement. If reinstatement is granted under this subsection, the licensee shall pay a reinstatement fee in an amount equal to the renewal fee. This subsection does not apply to a license that is revoked under s. 440.12.

History: 1977 c. 125,418; 1979 c. 162 s. 38 (7); 1981 c. 79 s. 17; 1981 c. 334 s. 25 (1); 1989 a. 243; 1991 a. 39; 1995 a. 188; 1997 a. 237.

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

Petitioner is not entitled to present expert evidence indicating he or she previously testified truthfully when denying misconduct under (1) (g). **Davis** v. Psychology Examining Board, 146 Wis. 2d 595, 431 N.W.2d 730 (Ct. App. 1988).

455.10 Injunctive relief. Violation of s. 455.02 may be enjoined in an action brought by the attorney general on petition by the examining board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the violation, the court shall enjoin the respondent from further violations thereof until he or she has been duly licensed. The remedy

given by this section is in addition to criminal prosecution under s. 455.11.

History: **1979 c. 162;** 1995 a. 188.

455.11 Penalty. Any person who violates this chapter may be fined not more than $200 or imprisoned not exceeding 6 months or both.

CHAPTER 457
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD

457.08 Social worker certificates and licenses.
457.10 Mamage and family therapist license.
457.12 Professional counselor license.

457.08 Social worker certificates and licenses.

(1) SOCIAL WORKER CERTIFICATE. The social worker section shall grant a social worker certificate to an individual who qualifies under s. 457.09 *(5)* (d) or to any individual who does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a bachelor's or master's degree in social work from a program accredited by, or a pre-accreditation program of, the council on social work education or a doctorate degree in social work.

(c) Passes an examination approved by the social worker section to determine minimum competence to practice as a social worker as specified in the rules promulgated under s. 457.03 (2).

(2) ADVANCED PRACTICE SOCIAL WORKER CERTIFICATE. The social worker section shall grant an advanced practice social worker certificate to any individual who is certified under sub. (1) and does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a master's degree in social work from a program accredited by, or a pre-accreditation program of, the council on social work education or a doctorate degree in social work.

(c) Passes an examination approved by the social worker section to determine minimum competence to practice as an advanced practice social worker as specified in the rules promulgated under s. 457.03 (2).

(3) INDEPENDENT SOCIAL WORKER CERTIFICATE. The social worker section shall grant an independent social worker certificate to any individual who is certified under sub. (1) and does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a master's degree in social work from a program accredited by, or a pre-accreditation program of, the council on social work education or a doctorate degree in social work.

(c) Submits evidence satisfactory to the social worker section that after receiving a master's or doctorate degree in social work he or she has engaged in the equivalent of at least **2** years of full–time supervised social work practice approved by the social worker section.

(d) Passes an examination approved by the social worker section to determine minimum competence to practice as an independent social worker as specified in the rules promulgated under s. 457.03 (2) or passes the academy of certified social workers examination administered by the National Association of Social Workers.

(4) CLINICAL SOCIAL WORKER LICENSE. The social worker section shall grant a clinical social worker license to any individual who is certified under sub. (1) and does all of the following:

(a) Satisfies the requirements in **s.** 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a master's degree in social work from a program accredited by, or a pre-accreditation program of, the council on social work education or a doctorate degree in social work and, as part of the master's or doctorate degree program, had a clinical social work concentration and completed supervised clinical field training.

(c) Submits evidence satisfactory to the social worker section that after receiving a master's or doctorate degree in social work he or she has engaged in the equivalent of at least 3,000 hours of clinical social work practice, including at least 1,000 hours of face–to–face client contact, supervised by one of the following:

1. An individual licensed as a clinical social worker who has received a doctorate degree in social work.

2. An individual licensed as a clinical social worker who has engaged in the equivalent of 5 years of full–time clinical social work.

3. A psychiatrist or a psychologist licensed under ch. 455.

4. An individual, other than an individual specified in subd. 1., 2., or 3., who is approved by the social worker section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the social worker section.

(d) Passes an examination approved by the social worker section to determine minimum competence to practice as a clinical social worker.

History: 1991 a. **160;** 1995 a. 27; 2001 a. 80.
Cross Reference: See also ch. SFC **3,** Wis. adm. code.

457.10 Marriage and family therapist license. The marriage and family therapist section shall grant a marriage and family therapist license to any individual who does all of the following:

(1) Satisfies the requirements in **s.** 457.06.

(2) Submits evidence satisfactory to the marriage and family therapist section that he or she has done any of the following:

(a) Received a master's or doctorate degree in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education.

(b) Received a master's or doctorate degree in marriage and family therapy, psychology, sociology, social work, professional counseling or other mental health field that included course work that the marriage and family therapist section determines is substantially equivalent to the course work required for a master's or doctorate degree in marriage and family therapy described under par. (a).

(3) Submits evidence satisfactory to the marriage and family therapist section that after receiving a master's or doctorate degree required under sub. *(2)* he or she has engaged in the equivalent of at least 3,000 hours of marriage and family therapy practice, including at least 1,000 hours of face–to–face client contact, supervised by one of the following:

(a) An individual licensed as a marriage and family therapist who has received a doctorate degree in marriage and family therapy.

(b) *An* individual licensed as a marriage and family therapist who has engaged in the equivalent of 5 years of full–time marriage and family therapy practice.

(c) A psychiatrist or a psychologist licensed under ch. 455.

(d) An individual, other than an individual specified in par. (a), (b), or (c), who is approved by the marriage and family therapist section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the marriage and family therapist section.

(4) Passes an examination approved by the marriage and family therapist section to determine minimum competence to practice marriage and family therapy.

History: 1991 **a. 160,** 2001 **a.** 80.
Cross Reference: See also chs. SFC 1.5, 16, and 18, Wis adm. code.

457.12 Professional counselor license. The professional counselor section shall grant a professional counselor license to any individual who does all of the following:

(1) Satisfies the requirements in s. 457.06.

(2) Submits evidence satisfactory to the professional counselor section that he or she has received a master's or doctorate degree in professional counseling or its equivalent from a program approved by the professional counselor section.

(3) Submits evidence satisfactory to the professional counselor section that he or she has done any of the following:

(a) After receiving a master's degree in professional counseling or its equivalent, engaged in the equivalent of at least 3,000 hours of professional counseling practice, including at least 1,000 hours of face–to–face client contact, supervised by one of the following:

1. An individual licensed as a professional counselor who has received a doctorate degree in professional counseling.

2. An individual licensed as a professional counselor who has engaged in the equivalent of 5 years of full–time professional counseling practice.

3. A psychiatrist or a psychologist licensed under ch. 455.

4. An individual, other than an individual specified in subd. 1., 2., or 3., who is approved by the professional counselor section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the professional counselor section.

(b) Received a doctorate degree in professional counseling or its equivalent, and, either during or after the doctorate degree program or its equivalent, engaged in the equivalent of at least 1,000 hours of full–time professional counseling practice supervised by one of the following:

1. An individual licensed as a professional counselor who has received a doctorate degree in professional counseling.

2. An individual licensed as a professional counselor who has engaged in the equivalent of 5 years of full–time professional counseling practice.

3. A psychiatrist or a psychologist licensed under ch. 455.

4. An individual, other than an individual specified in subd. 1., 2., or 3., who is approved by the professional counselor section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the professional counselor section.

(4) Passes an examination approved by the professional counselor section to determine minimum competence to practice professional counseling.

History: 1991 a. 160; 1993 a. 366; 2001 a. 80.

Cross Reference: *See* also chs. SFC **12** and **14 and s.** SFC 11.01, Wis. **adm code.**

CHAPTER 767
ACTIONS AFFECTING THE FAMILY

767.24 Custody and physical placement.
767.245 Visitation rights of certain persons.
767.325 Revision **of** legal custody and physical placement orders.

767.24 Custody and physical placement (1) GENERAL PROVISIONS In rendering a judgment of annulment, divorce, legal separation or paternity, or in rendering a judgment in an action under s. 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

(1m) PARENTING PLAN. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. **A** parenting plan shall provide information about the following questions:

(a) What legal custody or physical placement the parent is seeking

(b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in inter-spousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years

(c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in inter-spousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works

(d) Who will provide any necessary child care when the parent cannot and who will pay for the child care

(e) Where the child will go to school

(f) What doctor or health care facility will provide medical care for the child

(g) How the child's medical expenses will be paid

(h) What the child's religious commitment will be, if any

(i) Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities

(j) How the holidays will be divided

(k) What the child's summer schedule will be

(L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan

(m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making

(n) What child support, family support, maintenance or other income transfer there will be

(o) If there is evidence that either party engaged in inter-spousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

(2) CUSTODY TO PARTY; JOINT OR SOLE (a) Subject to pars(am), (b) and (c), based on the best interest of the child and after considering the factors under sub(5), the court may give joint legal custody or sole legal custody of a minor child

(am) The court shall presume that joint legal custody is in the best interest of the child

(b) The court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

1. Both parties agree to sole legal custody with the same party.

2. The parties do not agree *to* sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds any of the following:

a. One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.

b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.

c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of inter-spousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) **(am),** creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required

(c) The court may not give sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.

(3) CUSTODY TO AGENCY OR RELATIVE (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, as defined in s. 48.02 (15), to a county department, as defined under s. 48.02 (2g), or to a licensed child welfare agency. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under s. 48.415

(b) If the legal custodian appointed under par(a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child reaches 18 years of age, is returned to the custody of a parent or is placed under the guardianship of an agency. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. **An** agency may file an additional report at any time if it determines that more frequent reporting is appropriate. **A** report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any

(c) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par(b). **At** least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's parents, the child, if he or she is 12 years of age or over, and the child's foster parent, treatment foster parent or the operator of the facility in which the child is living

(d) Following the hearing, the court shall make all of the determinations specified under s. 48.38 *(5)* (c) and, if it determines that an alternative placement is in the child's best interest, may amend the order to transfer legal custody of the child to another relative, other than a parent, or to another agency specified under par(a)

(e) The charges for care furnished to a child whose custody is transferred under this subsection shall be pursuant to the procedure under s. 48.36 (1) or 938.36 (1) except as provided in s. 767.29 (3).

(4) ALLOCATION OF PHYSICAL PLACEMENT (a) 1. Except as provided under par(b), if the court orders sole or joint legal

custody under sub(2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.

2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub(5). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households

(b) **A** child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health

(c) No court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or, if the parties were married, to the former spouse

(cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under s. 48.356

(d) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody and physical placement rights to provide the notice required under s. 767.327 (1).

(5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial

(b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional

(c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest

(cm) The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life–style changes that a parent proposes to make to be able to spend time with the child in the future

(d) The child's adjustment to the home, school, religion and community

(dm) The age of the child and the child's developmental and educational needs at different ages

(e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household

(em) The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child

(f) The availability of public or private child care services

(fm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party

(g) Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party

(h) Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2)

(i) Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am)

(j) Whether either party has or had a significant problem with alcohol or drug abuse

(jm) The reports of appropriate professionals if admitted into evidence

(k) Such other factors as the court may in each individual case determine to be relevant.

(6) FINAL ORDER (a) If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child

(am) In making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001 (2m)

(b) Notwithstanding s. 767.001 (1s), in making an order of joint legal custody, the court may give one party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate

(d) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action

(e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

(7) ACCESS TO RECORDS (a) Except under par(b) or unless otherwise ordered by the court, access to a child's medical, dental and school records is available to a parent regardless of whether the parent has legal custody of the child

(b) **A** parent who has been denied periods of physical placement with a child under this section is subject to s. 118.125 (2) (m) with respect to that child's school records, s. 51.30 (5) (bm) with respect to the child's court or treatment records, s. 55.07 with respect to the child's records relating to protective services and s. 146.835 with respect to the child's patient health care records.

***(7m)* MEDICAL AND MEDICAL HISTORY INFORMATION** (a) In making an order of legal custody, the court shall order a parent who is not granted legal custody of a child to provide to the court medical and medical history information that is known to the parent. The court shall send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent who is granted legal custody of the child, and advise the physician or other health care provider of the identity of the child to whom the information relates. The information provided shall include all of the following:

1. The known medical history of the parent providing the information, including specific information about stillbirths or congenital anomalies in the parent's family, and the medical histories, if known, of the parents and siblings of the parent and any sibling of the child who is a child of the parent, except that medical history information need not be provided for a sibling of the child if the parent or other person who is granted legal custody of the child also has legal custody, including joint legal custody, of that sibling.

2. **A** report of any medical examination that the parent providing the information had within one year before the date of the order

(am) The physician or other health care provider designated under par(a) shall keep the information separate from other records kept by the physician or other health care provider. The information shall be assigned an identification number and maintained under the name of the parent who provided the information to the court. The patient health care records of the child that are kept by the physician or other health care provider shall include a reference to that name and identification number. If the child's patient health care records are transferred to another physician or other health care provider or another health care facility, the records containing the information provided under par(a) shall be transferred along with the child's patient health care records. Notwithstanding s. 146.819, the information provided under par(a) need not be maintained by a physician or other health care provider after the child reaches age 18

(b) Notwithstanding ss. 146.81 to 146.835, the information shall be kept confidential, except only as follows:

1. The physician or other health care provider with custody of the information, or any other record custodian at the request of the physician or other health care provider, shall have access to the information if, in the professional judgment of the physician or other health care provider, the information may be relevant to the child's medical condition.

2. The physician or other health care provider may release only that portion of the information, and only to a person, that the physician or other health care provider determines is relevant to the child's medical condition.

(8) NOTICE IN JUDGMENT. A judgment which determines the legal custody or physical placement rights of any person to a minor child shall include notification of the contents of s. 948.31.

(9) **APPLICABILITY.** Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1971 c. 149,157, 211; 1975 c. 39,122,200,283; 1977 c. 105,418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196 Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355,364, 383,403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213,446,481; 1995 a. 77, 100,275,289,343,375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109.

NOTE 1987 Wis. Act **355,** which made many changes **in** this section, contains a "legislative declaration" in section **1** and explanatory notes.

It was reversible error for the court to make a custody award when the court should have recognized the rule of comity and declined to exercise its jurisdiction. Sheridan v. Sheridan, 65 Wis. 2d 504,223 N.W.2d 557 (1974).

As a general matter, the child's best interests will be served by living with a parent. If circumstances compel a contrary conclusion, the interests of the child, not a supposed right of a parent to custody, controls. In a dispute between a father and a deceased mother's parents, the court erred in concluding that it must award custody to a natural parent unless he was unfit or unable to care for the children. LaChapell v. Mawhinney, 66 Wis. 2d 679,225 N.W.2d 501 (1975).

The record of a temporary hearing may be relevant at a divorce hearing, but is not controlling, and neither party has the burden of proving a change in circumstances to warrant a change from the temporary order. Kuesel v. Kuesel, 74 Wis. 2d 636, 247 N.W.2d 72 (1976).

The trial court may not order a custodial parent to live in designated part of the state or else lose custody. Groh v. Groh, 110 Wis. 2d 117, 327 N.W.2d 65.5 (1983).

In a custody dispute between a parent and a third party, unless the court finds that the parent is unfit or unable **to** care for the child, or that there are compelling reasons for denying custody *to* the parent, the court must grant custody to the parent. Barstad v. Frazier, 118 Wis. 2d 549, 348 N.W.2d 479 (1984).

A contract between a parent and a non-parent to transfer permanent custody is unenforceable. Interest of Z.J.H. 162 Wis. 2d 1002,471 N.W.2d 202 (1991).

But see Custody of H.S.H-K, 193 Wis. 2d 649, 533 N.W.2d 419 (1995) regarding unmarried persons contracting for visitation in a co-parenting agreement. Revision of s. 767.24 to allow joint custody in cases in which both parties did not agree was not a "substantial change in circumstances" justifying a change to joint custody. Licary v. Licary, 168 Wis. 2d 686,484 N.W.2d 371 (Ct. App. 1992).

Section 767.001 (2m) confers the right to choose a child's religion on the custodial parent. Reasonable restrictions on visitation to prevent subversion of this right do not violate the constitution. Langc v. Lange, 175 Wis. 2d 373, N.W.2d (Ct. App. 1993).

There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. Koeller v. Koeller, 195 Wis. 2d 660, 536 N.W.2d 216 (Ct. App. 1995).

A custodial parent's right to make major decisions for the children does not give that parent the right to decide whether the actions of the noncustodial parent are consistent with those decisions. Wood v. DeHahn, 214 Wis. 2d 221, 571 N.W.2d 186 (Ct. App. 1997).

Neither sub(4) (b) nor s. 767.325 (4) permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. Jocius **v.** Jocius, 218 Wis. 2d 103,580 N.W.2d 708 (Ct. App. 1998).

Section 813.122 implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction under that section against a parent who has custody or placement of a child under a divorce order or judgment. Scott M.H. v. Kathleen M.H. 218 Wis. 2d 605,581 N.W.2d 564 (Ct. App. 1998).

Sub(5) (b), while requiring consideration of the child's wishes, leaves to the court's discretion whether to allow the child to testify. That the child is a competent witness under s. 906.01 does not affect the court's discretion. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

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 interests" and "safety" are not synonymous. Richard D. v. Rebecca G. 228 Wis. 2d 658, 599 N.W.2d 90 (Ct. App. 1999).

Sub(4) requires allocation of placement between the parents. Before **a** court may deny a parent all placement or contact with a child, it must find that the contact would endanger the child's physical, mental or emotional health. A parent who seeks to deny all contact by the other parent has the burden of proving the danger to the child. Wolfe v. Wolfe, 2000 WI App 93, 234 Wis. 2d 449, 610 N.W.2d 222.

There is no presumption of equal placement. While sub(4) (a) 2. requires the court to provide for placement that allows the child to have regularly occurring, meaningful periods of physical placement with each parent, that is not tantamount to a presumption of equal placement. Keller v. Keller, 2002 WI App 161, ___ Wis. 2d ___, 647 N.W.2d 426.

Custody—to which parent? Podell, Peck, First, 56 MLR 51. The best interest of the child doctrine in Wisconsin custody cases. 64 MLR 343 (1980).

Recent Changes in Wisconsin's Law Regarding Child Custody and Placement. Rue. 2001 WLR 1177.

Debating the Standard in Child Custody Placement Decisions. Molvig. Wis. Law. July 1998. Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

767.245 Visitation rights of certain persons (1) Except as provided in subs(1m) and (2m), upon petition by a grandparent, great-grandparent, step-parent or person who has maintained a relationship similar to a parent–child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

(1m) (a) Except as provided in par(b), the court may not grant visitation rights under sub(1) to a person who 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

(b) Paragraph (a) does 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 the determination.

(2) Whenever possible, in making a determination under sub(1), the court shall consider the wishes of the child.

(2m) Subsection (3), rather than sub(1), applies to a grandparent requesting visitation rights under this section if sub(3) (a) to (c) applies to the child.

(3) The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of the hearing and the court determines all of the following:

(a) The child is a non-marital child whose parents have not subsequently married each other

(b) Except **as** provided in sub(4), the paternity of the child has been determined under the laws of this state or another jurisdiction if the grandparent filing the petition is a parent of the child's father

(c) The child has not been adopted

(d) The grandparent has maintained a relationship with the child or has attempted to maintain a relationship with the child but has been prevented from doing so by a parent who has legal custody of the child

(e) The grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare

(f) The visitation is in the best interest **of** the child.

(3c) A grandparent requesting visitation under sub(3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

(3m) (a) **A** pretrial hearing shall be held before the court in an action under sub(3). At the pretrial hearing the parties may present and cross-examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds it unlikely that all parties will accept a recommendation under this subsection

(4) If the paternity of the child has not yet been determined in an action under sub(3) that is commenced by a person other than a parent of the child's mother but the person filing the petition under sub(3) has, in conjunction with that petition, filed a petition or motion under s. 767.45 (1) **(k),** the court shall make a determination as to paternity before determining visitation rights under sub(3).

(5) Any person who interferes with visitation rights granted under sub(1) or (3) 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.

(6) (a) If a person granted visitation rights with a child under this section 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 modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a parent or guardian of the child, or upon the court's own motion, and upon notice to the person granted visitation rights

(b) Paragraph (a) does 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.

History: 1971 c. 220; 1977 c. 105 **ss.** 35, 39; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 **s.** 767.245: 1983 a. 447.450: 1987 a. 355: 1995 a. 68: 1999 a. 9.

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. Soergel v. Soergel, 154 Wis. 2d 564.453 N.W.2d 624 (1990).

The visitation petition of a custodial parent's widow did not meet the criteria of sub(1) when, prior to the custodial parent's death, the non–custodial parent had filed a motion to revise custody. Section 880.155 governs visitation in the event of a parent's death. Cox v. Williams, 177 Wis. 2d 433, 502 N.W.2d 128 (1993).

A paternity case in which the court has retained postjudgment authority to enforce the judgment constitutes an underlying action under which a petition for grandparent visitation may be brought. Paternity of Nastassja L.H.–J. 181 Wis. 2d 666, 512 N.W.2d 189 (Ct. App. 1993).

An existing underlying action affecting the family does not alone provide standing to petition under this section. The underlying action must threaten the integrity of a family unit. An action under this section does not apply to intact families. Because the father figure in a household was not the biological or adoptive father of one **of** the children did not mean the family was not intact. Marquardt v. Hegemann–Glascock, 190 Wis. 2d 447,526 N.W.2d 834 (Ct. App. 1994).

This section does not apply outside the dissolution of a marriage, but it does not preempt the consideration of visitation in circumstances not subject to the statute. A circuit court **may** consider visitation by a non–parent outside a mamage dissolution situation in the best interests of the child if the non–parent petitioner demonstrates a parent–like relationship with the child and shows a significant triggering event such as substantial interference with that relationship. Custody of H.S.H.–K. 193 Wis. 2d 649,533 N.W.2d 419 (1995).

Public policy does not prohibit a court, relying on its equitable powers, to grant visitation outside this section on the basis of a co–parenting agreement between a biological parent and another when visitation is in the child's best interest. Custody of H.S.H.–K. 193 Wis. 2d 649, 533 N.W.2d 419 (1995).

When applying sub(3), circuit courts must apply the presumption that a fit parent's decision regarding grandparent visitation is in the best interest of the child, hut the court must still make its own assessment of the best interest of the child. Paternity of Roger D.H. 2002 WI App 35,250 Wis. 2d 747,641 N.W.2d 440.

Grand-parent Visitation Rights. Rothstein. Wis. Law. Nov. 1992. The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992. Third–party Visitation in Wisconsin. Herman & Cooper. Wis. Law. March 2001.

767.325 ***Revision of*** **legal custody and physical placement orders.** Except for matters under s. 767.327 or 767.329, the following provisions are applicable to modifications of legal custody and physical placement orders:

(1) SUBSTANTIAL MODIFICATIONS (a) ***Within 2 years after initial order.*** Except as provided under sub(2), a court may not modify any of the following orders before 2 years after the initial order is entered under s. 767.24, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:

1. An order of legal custody.

2. An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child

(b) ***After 2–year period.*** 1. Except as provided under par(a) and sub(2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:

a. The modification is in the best interest of the child.

b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1., there is a rebuttable presumption that:

a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.

b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time *is* in the best interest of the child.

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

(2) MODIFICATION OF SUBSTANTIALLY EQUAL PHYSICAL PLACEMENT ORDERS. Notwithstanding sub(1): (a) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child

(b) In any case in which par(a) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion or order to show cause of a party, may modify such an order based on the appropriate standard under sub(1). However, under sub(1) (b) 2., there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

(2m) MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO EXERCISE PHYSICAL PLACEMENT. Notwithstanding subs(1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

(3) MODIFICATION OF OTHER PHYSICAL PLACEMENT ORDERS. Except as provided under subs(1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

(4) DENIAL OF PHYSICAL PLACEMENT. Upon petition, motion or order to show cause by a party or on its own motion, a court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health.

(4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT (a) Notwithstanding subs(1) to (4), upon petition, motion or order to show cause by a party or on its own motion, a court shall modify a physical placement order by denying a parent physical placement with a child if the parent 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 the child's other parent, and the conviction has not been reversed, set aside or vacated

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that physical placement with the parent would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(5) REASONS FOR MODIFICATION. If either party opposes modification or termination of a legal custody or physical placement order under this section the court shall state, in writing, its reasons for the modification or termination.

(5m) FACTORS TO CONSIDER. In all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24 *(5)* and shall make its determination in a manner consistent with s. 767.24.

(6) NOTICE. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(6m) PARENTING PLAN. In any action to modify a legal custody or physical placement order under sub(1), the court may require the party seeking the modification to file with the court a parenting plan under s. 767.24 (Im) before any hearing is held.

(7) TRANSFER TO DEPARTMENT. The court may order custody transferred to the department of health and family services only if that department agrees to accept custody.

(8) PETITION, MOTION OR ORDER TO SHOW CAUSE. A petition, motion or order to show cause under this section shall include notification of the availability of information under s. 767.081 (2).

(9) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a modification of a legal custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1987 a. 355,364; 1995 a. 27 s. 9126 (19); 1999 a. 9.

NOTE: **1987** Wis. Act **355,** which created this section, contains explanatory notes.

"Necessary" implies that a change of custody itself is needed because custodial conditions are harmful in some way to the best interest of the child.. Millikin v. Millikin, 115 Wis. 2d 16, 339 N.W.2d 573 (1983).

The revision of s. 767.24 allowing joint custody in cases where both parties did not agree was not a "substantial change in circumstances" justifying a change to joint custody. Licary v. Licary, 168 Wis. 2d 686,484 N.W.2d 371 (Ct. App. 1992).

Sub(1) (a) prohibits a change of custody solely to correct a mother's unreasonable interference with physical placement of the child with the father.

Sub(1) (a) provides a 2–year truce period. Judicial intervention during this period must be compelling. Paternity of Stephanie R.N. 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

"Necessary" embodies at least 2 concepts: 1) that the modification must operate to protect the child from alleged harmful custodial conditions, and 2) that the physical or emotional harm threatened by the current custodial conditions must be severe enough to warrant modification. Paternity of Stephanie R.N. 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

Section 767.325 does not limit a court's authority to hold a hearing or enter an order during the 2–year "truce period with the order effective on the conclusion of the truce period. Paternity of Bradford J.B. 181 Wis. 2d 304, 510 N.W.2d 775 (Ct. App. 1993).

There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. Koeller v. Koeller, 195 Wis. 2d 660, 536 N W.2d 216 (Ct. App. 1995).

Sub(1) (b) is inapplicable in guardianship litigation between a parent and a 3rd party guardian. Howard M. v. Jean R. 196 Wis. 2d 16, 539 N.W.2d 104 (Ct. App. 1995).

Neither sub(4) nor s. 767.24 (4) @)permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. Jocius v. Jocius, 218 Wis. 2d 103, 580 N.W.2d 708 (Ct. App. 1998).

Sections 767.325 and 767.327 do not conflict. If one party files a notification of intention to move under s. 767.327, the other parent may file a motion to modify placement under s. 767.325, and the court may consider all relevant circumstances, including, hut not limited to, the move. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

The sub(1) prohibition against modification of placement orders applies to both primary placement and physical placement. Trost v. Trost, 2000 WI App 222, 239 Wis. 2d 1, 619 N.W.2d 105.

When a court denies a parent physical placement, it has the authority to impose conditions for regaining placement, which may include mental health treatment, anger management, individual or family counseling, and parenting training. Conditions imposed must be necessary to protect the child from the danger of physical, emotional, or mental harm if the child is placed with the parent. State v. Alice H. 2000 WI App 228,239 Wis. 2d 194, 619 N.W.2d 151.

By asking the trial court for what constituted a substantial modification of placement, the movant effectively conceded that there was a substantial change in circumstances to merit placement modification under sub(1) (b) 1. and could not maintain a contrary position on appeal. Keller v. Keller, 2002 WI App 161, ___ Wis. 2d ___, 647 N.W.2d 426.

CHAPTER 880
GUARDIANS AND WARDS

SUBCHAPTER I
GENERAL PROVISIONS

880.01 Definitions.
880.09 Nomination; selection of guardians.
880.33 Incompetency;appointment of guardian

SUBCHAPTER III
UNIFORM TRANSFERS TO MINORS ACT

880.70 Accounting by and determination of liability of custodian.
880.705 Termination of custodianship.
880.71 pplicability.
880.715 Effect on existing custodianships.
880.72 Uniformity of application and construction

Cross–reference: See definitions in ch. 851.

SUBCHAPTER I
GENERAL PROVISIONS

880.01 Definitions. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, men tally ill, alcoholic, drug dependent and aging persons, including a county department under **s.** 51.42 or 51.437.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(3) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.

(4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

(5) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

(6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the welfare of the person who is to be protected.

(7) "Minor" means a person who has not attained the age of 18 years.

(7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in **s.** 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an 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.

(8) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for the individual's own care or custody.

(9) "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of the person or others so as to endanger the support of the person and the person's dependents or expose the public to such support.

(10) "Ward" means a subject for whom a guardian has been appointed.

History: 1971 c. **41** s. 8; 1971 c. 228 s. **36;** Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. **430;** 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. **366;** 1993 a. 486; 1995 a. 268.

Guardianships and Protective Placements. Viney. Wis. Law. Aug. 1991.

880.09 Nomination; selection of guardians. The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) NOMINATION BY MINOR. A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) PREFERENCE. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under **s.** 880.35 only if no suitable individual guardian is available.

(3) EFFECT OF NOMINATION BY MINOR. If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) GUARDIAN OF THE PERSON NOMINATED BY WILL. Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his or her minor child.

(5) GUARDIAN OF THE ESTATE NOMINATED BY WILL. A parent may by will nominate a guardian of the estate of the parent's minor child and may waive the requirement of a bond as to such estate derived through the will.

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under **s.** 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) ANTICIPATORY NOMINATION; PREFERENCE. Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

The **nomination** by a **parent unfit to** be his children's **guardian should** be weighed by the court. **In** re Guardianship of **Schmidt, 71 Wis. 2d** 317,237 N.W.2d 919.

880.33 Incompetency; appointment of guardian. 1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. The privilege under **s.** 905.04 shall not apply to this statement. **A** copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

(2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under **s.** 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under **s.** 880.07 (Im) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under **s.** 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

2. If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

3. If the person is an adult who is indigent, the county of legal settlement shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under **s.** 977.08, for any legal fees due the person's legal counsel. If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8

(b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(d) The hearing on a petition which contains allegations under **s.** 880.07 (Im) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. **A** finding by a court under **s.** 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under **s.** 880.33 (4m) has the effect of filing a petition under **s.** 880.07 (1m).

(e) Every hearing on a petition under s. 880.07 (Im) shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in **s.** 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under **s.** 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

2m. If the court modifies the treatment plan under subd. **2.,** the court shall order the appropriate county department under **s.** 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

3. Order protective services under ch. 55.

4. Order the appropriate county department under **s.** 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

(4r) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

(5m) No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

(8) At the time of determination of incompetency under this section, the court may:

(a) Hear application for the appointment of a conservator or limited guardian of property.

(b) If the proposed incompetent has executed a power of attorney for health care under ch. 155, find that the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

(9) All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

History: 1973 c. 284; 1975 c. 393,421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 237.

Judicial Council Rote, **1990:** Sub. (3) is amended by striking reference to tlie right to testify in judicial or administrative proceedings. The statute conflicts with s. 906.01, as construed in State v. Hanson, 149 Wis. 2d 474 (1989) and State v. Dwyer, 149 Wis. 2d 850 (1989). [Re Order eff. 1–1–91]

A "common sense" finding of incompetency was insufficient for placement under s. 55.06. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. Guardianship & Protective Placement of Shaw, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

The written report of a physician or psychologist under (sub. 1) is hearsay and not admissible in a contested hearing without in–court testimony of the preparing expert. In Matter of Guardianship of R.S. 162 Wis. 2d 197,470 N.W.2d 260 (1991).

A guardian may not be given authority to forcibly administer psychotropic drugs to a ward. An order for the forcible administration of psychotropic drugs may only be made in a ch. 51 proceeding. State ex rel. Roberta S. v. Waukesha DHS, 171 Wis. 2d 266,491 N.W.2d 114 (Ct. App. 1992).

The expenses of a guardian ad litem in guardianship proceedings are correctly assessed to the ward under s. 757.48. Assessment of the costs of a medical expert are within the discretion of the court. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence or raise evidentiary objections. A court could consider such participation helpful and in its discretion allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. APP. 1998).

Sub. (6) requires the closing only of documents filed with the register in probate with respect to ch. 880 proceedings. 67 Atty. Gen. 130.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (Im) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement **or** services. OAG 5–99.

880.70 Accounting by and determination of liability of custodian.

(1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court:

(a) For an accounting by the custodian or the custodian's legal representative; or

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. 880.69 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under ss. 880.61 to 880.72 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. 880.695 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1987 a. 191.

880.705 Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. 880.625 or 880.63;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. 880.635 or 880.64; or

(3) The minor's death.

History: 1987 a. 191.

880.71 Applicability. Sections 880.61 to 880.72 apply to a transfer within the scope of s. 880.615 made after April 8, 1988, if:

(1) The transfer purports to have been made under ss. 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ss. 880.61 to 880.72 is necessary to validate the transfer.

History: 1987 a. 191.

880.715 Effect on existing custodianships.

(1) Any transfer of custodial property as defined in ss. 880.61 to 880.72 made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985

stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections 880.61 to 880.72 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections 880.61 to 880.705 with respect to the age of a minor for whom custodial property is held under ss. 880.61 to 880.72 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of I8 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. 880.61 to 880.72, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

History: 1987 a. 191.

880.72 Uniformity of application and construction. Sections 880.61 to 880.72 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. 880.61 to 880.72 among states enacting it.

History: 1987 a. 191.

CHAPTER *895*
MISCELLANEOUS GENERAL PROVISIONS

895.70 Sexual exploitation by a therapist.
895.73 Service representatives.

895.70 Sexual exploitation by a therapist. (1) DEFINITIONS. In this section:

(a) "Physician" has the meaning designated in s. 448.01 *(5)*.

(b) "Psychologist" means a person who practices psychology, as described in s. 455.01 *(5)*.

(c) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(d) "Sexual contact" has the meaning designated in s. 940.225 *(5)*(b).

(e) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) CAUSE OF ACTION. (a) Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact. Consent is not an issue in an action under this section, unless the sexual contact that is the subject of the action occurred more than 6 months after the psychotherapy, counseling, assessment or treatment ended.

(b) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1) and 815.05 (Ig) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiff's attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(c) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person bringing an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.585. (

(5) SILENCE AGREEMENTS. Any provision in a contract or agreement relating to the settlement of any claim by a patient against a therapist that limits or eliminates the right of the patient to disclose sexual contact by the therapist to a subsequent therapist, the department of regulation and licensing, the department of health and family services, the patients compensation fund peer review council or a district attorney is void.

History: 1985 a. 275; 1987 a. 352; 1991 a. 160, 217; 1995 a. 27 s. 9126 (19); 1999 a. 85.

Under sub. (2) consent is not an issue and, as such, an instruction regarding the victim's contributory negligence was improper. Block v. Gomez, **201** Wis. 2d 795, 549 N.W.2d 783 (Ct. App. 1996).

This section grants no cause of action against a therapist's employer. L.L.N. v. Clauder, **203** Wis. 2d 570,552 N.W.2d 879 (Ct. App. 1996

895.73 Service representatives. *(1)* DEFINITIONS. In this section:

(a) "Abusive conduct" means domestic abuse, as defined under s. 46.95 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined under s. 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

(b) "Complainant" means an adult who alleges that he or she was the subject of abusive conduct or who alleges that a crime has been committed against him or her.

(c) "Service representative" means an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided to a complainant under sub. (2) or to a petitioner under s. 813.122.

(2) RIGHT TO BE PRESENT. A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions and court proceedings, if abusive conduct is alleged to have occurred against the Complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.24 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. **A** service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

(3) FAILURE TO EXERCISE RIGHT NOT GROUNDS FOR APPEAL. The failure of a complainant to exercise a right under this section is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

History: 1991 a. 276; 1995 a. 220; 2001 a. 109.

CHAPTER 905

EVIDENCE — PRIVILEGES

905.01 Privileges recognized only as provided.
905.015 Interpreters for persons with language difficulties, limited English proficiency, or hearing or speaking impairments.
905.02 Required reports privileged by statute.
905.03 Lawyer–client privilege.
905.04 Physician–patient. registered nurse–patient, chiropractor–patient, psychologist–patient, social worker–patient, marriage and family therapist–patient and professional counselor–patient privilege.
905.035 Domestic violence or sexual assault advocate–victim privilege.
905.05 Husband–wife privilege.
905.06 Communications to members of the clergy.
905.065 Honesty testing devices.
905.07 Political vote.
905.08 Trade secrets.
905.09 Law enforcement records.
905.10 Identity of informer.
905.11 Waiver of privilege by voluntary disclosure.
905.12 Privileged matter disclosed under compulsion or without opportunity to claim privilege.
905.13 Comment upon or inference from claim of privilege; instruction.
905.14 Privilege in crime victim compensation proceedings.
905.15 Privilege in use of federal tax return information.

NOTE: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with chs. 901 to 911 in 59 Wis. 2d. The court did not adopt the comments but ordered them printed with the rules for inkrmation purposes.

905.01 Privileges recognized only as provided. Except as provided by or inherent or implicit in statute or in rules adopted by the supreme court or required by the constitution of the United States or Wisconsin, no person has a privilege to:

(1) Refuse to be a witness; or

(2) Refuse to disclose any matter; or

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

History: Sup. Ct. Order, 59 Wis. 2d RI, R101 (1973).

This section precludes courts from recognizing common law privileges not contained in the statutes, or the U.S. or Wisconsin constitutions. Privileges and confidentialities granted by statute are strictly interpreted. Davison v. St. Paul Fire & Marine Insurance Co. 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

A defendant did not have standing to complain that a physician's testimony violated the witness's physician/patient's privilege under s. 905.04; the defendant was not authorized to claim the privilege on the patient's behalf. State v. Echols, 152 Wis. 2d 725, 449 N.W.2d 320 (Ct. App. 1989).

As s. 907.06 (1) prevents a court from compelling an expert to testify, it logically follows that a litigant should not be able to so compel an expert and a privilege to refuse to testify is implied. Burnett. v. Alt, 224 Wis. 2d 72, 589 N.W.2d 21 (1999).

905.015 Interpreters for persons with language difficulties, limited English proficiency, or hearing or speaking impairments. If an interpreter for a person with a language difficulty, limited English proficiency, as defined in s. 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a communication which is privileged by statute, rules adopted by the supreme court, or the U.S. or state constitution, the interpreter may be prevented from disclosing the communication by any person who has a right to claim the privilege. The interpreter may claim the privilege but only on behalf of the person who has the right. The authority of the interpreter to do so is presunied in the absence of evidence to the contrary.

History: 1979 c. 137; 1985 a. 266; 2001 a. 16.

905.02 Required reports privileged by statute. A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilcge'to refuse to disclose and to prevent any other person from disclosing the return or report, if provided by law. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if provided by law. No privilege exists under this section in actions involving false swearing, fraudulent writing, fraud in the retum or report, or other failure to comply with the law in question.

History: Sup. Ct. Order, 59 Wis. 2d R1, R109 (1973).

This section applies only to privileges specifically and unequivocally provided by law against the disclosure of specific materials. Davison v. St. Paul Fire & Marine Insurance Co. 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

905.03 Lawyer–client privilege. (1) DEFINITIONS. As used in this section:

(a) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(c) A "representative of the lawyer" is one employed to assist the lawyer in the rendition of professional legal services.

(d) A communication is "confidential" if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(2) GENERAL RULE OF PRIVILEGE. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client: between the client or the client's representative and the client's lawyer or the lawyer's representative; or between the client's lawyer and the lawyer's representative; or by the client or the client's lawyer to a lawyer representing another in a matter of common interest; or between representatives of the client or between the client and a representative of the client; or between lawyers representing the client.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The lawyer's authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. There is no privilege under this rule:

(a) *Furtherance of crime or fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(b) *Claimants through same deceased client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(c) *Breach of duty by lawyer or client.* As to a communication relevant to an issue of breach of duty by the lawyer to the lawyer's client or by the client to the client's lawyer; or

(d) *Document attested by lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) *Joint clients.* As to a communication relevant to a matter of common interest between 2 or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

History: Sup. Ct. Order, 59 Wis. 2d R1, R111 *(1913);* 1991 a. 32.

That there was a communication from a client to an attorney is insufficient to find the communication is privileged. Jax v. Jax, 73 Wis. 2d 572, 243 N.W.2d 831 (1975).

There is not a general exception to the lawyer–client privilege in legal malpractice cases. The extent of the privilege is discussed. Dyson v. Hempe, 140 Wis. 2d 792, 413 N.W.2d **379** (Ct. App. 1987).

When a defendant alleges ineffective assistance of counsel, the lawyer–client privilege **is** waived to the extent that counsel must answer questions relevant to the allegation. State v. Flores, 170 Wis. 2d 272, 458 N.W.2d 116 (Ct. App. 1992).

A litigant's request to see his or her file that is in the possession of current or fonner counsel does not waive the attomey–client and work product privileges and does not allow other parties to the litigation discovery of those files. Borgwardt v. Redlin. *196* Wis. 2d 342, 538 N.W.2d 581 (Ct. App. 1995).

Waiver of attorney–client privilege is not limited to direct attacks on attorney perfonnancc. An attempt to withdraw a plea on the grounds that it was not knowingly made raised the issue of attorney performance and resulted in a waiver of the attorney–client privilege. State v. Simpson, 200 Wis. 2d 798, 548 N.W.2d 105 (Ct. App. 1996).

Attorney–client privilege is not waived by a broadly worded insurance policy cooperation clause in a coverage dispute. There is not a common interest exception to the privilege when the attorney was not consulted in common by two clients. State v. Hydrite Chemical Co. 220 Wis. 2d 51, 582 N.W.2d 411 (Ct. **App.** 1998).

The attorney–client privilege is waived when the privilege holder attempts to prove a claim or defense by disclosing or describing an attomey–client communication. State v. Hydrite Chemical Co. 220 Wis. 2d 51, 582 N.W.2d 411 (Ct. App. 1998).

A videotaped interview of a crime victim conducted by the alleged perpetrator's spouse was not privileged as attorney communication because it was made in the presence of a 3rd–party, the victim, and was not confidential. Estrada v. State, 225 Wis. 2d 459, 596 N.W.2d 396 (Ct. App. 1999).

A former director cannot act on behalf of the client corporation and waive the lawyer–client privilege. Even though documents were created during the former director's tenure as a director, a fonner director is not cntitlcd to documents in the corporate lawyer's files. Lane v. Sharp Packaging Systems, 2002 WI 28, 251 Wis. 2d 68, 640 N.W.2d 788.

Billing records are communications from the attorney to the client, and producing those communications violates the lawyer–client privilege if production of the documents reveals the substance **of** lawyer–client communications. Lane v. Sharp Packaging Systems, 2002 WI **28, 251** Wis. 2d 68, 640 N.W.2d 788.

The test for invoking the crime–fraud exception under sub. (4) (a) is whether there is reasonable cause to believe that the attorney's services were utilized in furtherance of the ongoing unlawful scheme. If a prima facie case **is** established. an in camera review of the requested documents is required to determine if the exception applies. Lane v. Sharp Packaging Systems, 2002 WI 28, 251 Wis. 2d 68, 640 N.W.2d 788.

Both present and former counsel may testify on the issue of a defendant's competency to proceed to trial. In close cases, particularly if concerns of malingering are present, a competency determination may depend on opinions of counsel. State v. Meeks, 2002 WI App 65, 251 Wis. 2d 361, 643 N.W.2d 526.

Attorney–client privilege in Wisconsin. Stover and Koesterer. 59 MLR *221.*

Attorney–client privilege: Wisconsin's approach to exceptions. 72 MLR 582 (1989).

905.04 Physician–patient, registered nurse–patient, chiropractor–patient, psychologist–patient, social worker–patient, marriage and family therapist–patient and professional counselor–patient privilege. (1) DEFINITIONS. In this section:

(a) "Chiropractor" means a person licensed under **s.** 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) **A** communication or information is "confidential" if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family.

(bm) "Marriage and family therapist" means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) "Patient" means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(d) "Physician" means a person as defined in s. 990.01 (28), or reasonably believed by the patient so to bc.

(din) "Professional counselor" means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) "Psychologist" means a licensed psychologist, as that term is defined in s. 455.01 (4), or a person reasonably believed by the patient to be a psychologist.

(f) "Registered nurse" means a nurse who is licensed under s. 44 1.06 or licensed as a registered nurse in a party state, as defined in s. 441.50 (2) (j), or a person reasonably believed by the patient to be a registered nurse.

(g) "Social worker" means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient to be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

(2) GENEKAL RULE OF PRIVILEGE. **A** patient has a privilege to refuse to disclose and *to* prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the paticnt's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. (a) *Proceedings for hospitalization, guardianship, protective services or protective placement.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian under s. 880.33, for court–ordered protective services or protective placement or for review of guardianship, protective services or protective placement orders, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services or protective placement.

(am) *Proceedings for guardianship.* There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient fiimished to the court by a physician or psychologist under s. 880.33 (1).

(b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition **of** the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the paticnt's death, in any pro-

cceding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 1. In this paragraph:

a. "Abuse" has the meaning given in **s.** 48.02 (1).

b. "Neglect" has the meaning given in **s.** 48.981 (1) (d).

2. There is no privilcgc in situations where the examination of an abused or neglected child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the abuse or neglect was other than accidentally caused or inflicted by another.

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self–control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, cxhibitcd to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in s. 340.01 (Iv).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under ss. 767.45 to 767.53.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s. 146.995 pertaining to a patient's name and type of wound or burn injury.

(i) *Providing services* to *court injuvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under s. 48.067 or 48.069 only as provided in **s.** 48.78 and may disclose information obtained while providing services under s. 938.067 or 935.069 only as provided in s. 938.78.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61,418: 1979 c. 32 s. 92 (1); 1979 c. 221, 352; 1983 a. 400,535; 1987 a. 233,264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160;1993 a. 98; 1995 a. 77,275,436; 1997 a. 292: 1999 a. 22; 2001 a. 80.

Sub. (4) (a) applies to proceedings to extend a commitment under the sex crimes act. State v. Hungerford, 84 Wis. 2d 236,267 N.W.2d 258 (1978).

By entering a plea of not guilty by reason of mental disease or defect, the defendant lost the physician-patient privilege by virtue of s. 905.04 (4) (c) and the confidentiality oftreahnent records under s. 51.30 (4) (b) 4. State v. Taylor, 142 Wis. 2d 36,417 N.W.2d 192 (Ct. App. 1987).

A psychotherapist's duty to 3rd parties for dangerous patients' intentional behavior is discussed. Schuster v. Altenberg, 144 Wis. 2d 223.424 N.W.2d 159 (1988).

A defendant did not have standing to complain that a physician's testimony violated a witness's physician-patient's privilege under s. 905.04; the defendant was not authorized to claim the privilege on the patient's behalf. State v. Ecbols, 152 Wis. 2d 725,449 N.W.2d 320 (Ct. App. 1989).

Under sub. (4) (g), the history of a pregnancy is discoverable. The court may permit discovery of the history as long as infonnation regarding the mother's sexual relations outside of the conceptive period is eliminated. In re Paternity of J.S.P. 158 Wis. 2d 100,461 N.W.2d 794 (Ct. App. 1990).

Because under sub. (4) (f) there is no privilege for chemical tests for intoxication, the results of a test taken for diagnostic purposes are admissible in an OMVWI trial. City of Muskego v. Godec, 167 Wis. 2d 536,482 N.W.2d 79 (1992).

A patient's mere presence in a physician's office is not within the ambit of this privilege. **A** defendant charged with trespass to a medical facility. s. 943.145. is entitled to compulsory process to determine if any patients present at the time of the alleged incident had relevant evidence. State v. Migliorino, 170 Wis. 2d 576,489 N.W.2d 678 (Ct. App. 1992).

To be entitled to an in camera inspection of privileged records, a criminal defendant must show that the sought after evidence is relevant and may be necessary to a fair determination of guilt or innocence. Failure of the record's subject to agree to inspection is grounds for sanctions, including suppressing the record subject's testimony. State v. Shiffra, 175 Wis. 2d 600,499 N.W.2d 719 (Ct. App. 1993).

The patient's objectively reasonable expectations of confidentiality from the medical provider are the proper gauge of the privilege. State v. Locke, 177 Wis. 2d 590, 502 N.W.2d 891 (Ct. App. 1993).

When a patient's medical condition is at issue the patient–client privilege gives way. Wikrent v. Toys "R" Us, 179 **Wis.** 2d 297.507 N.W.2d 130 (Ct. App. 1993).

Ex parte contacts between several treating physicians after the commencement of litigation did not violate this section. This section applies only to judicial proceedings and places restrictions on lawyers, not physicians. Limited ex parte contacts between defense counsel and plaintiff's physicians are permissible. but ex parte discovery is not. Steinberg v. Jensen. 194 Wis. 2d 440, 534 N.W.2d 361 (1995).

There is no general exception to privileged status for communications gathered from incarcerated persons. State v. Joseph P. 200 Wis. 2d 227,546 N.W.2d 494 (Ct. App. 1996).

Both initial sex offender commitment and discharge hearings under ch. 980 are "proceedings for hospitalization" within the exception to the privilege under sub. (4) (a). State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

A party may not challenge on appeal an in camera review of records conducted at his own request. State v. Darcy N. K. 218 W (d) 640, 581 N.W.2d 567 (Ct. App. 1998).

This section does not regulate the conduct of physicians outside of a courtroom. Accordingly it does not give a patient the right to exclude others from a treatment area. State v. Thompson, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998).

When a motion has been made seeking a minor victim's health care records, the state shall give notice to the victim and the victim's parents, providing a reasonable time to object to the disclosure. If the victim does not expressly consent to disclosure, the state shall not waive the materiality hearing under *Schiffra.* Jessica J.L. v. State, 223 Wis. 2d 622,589 N.W.2d 660 (Ct. App. 1998).

The psychotherapist–patient privilege does not automatically or absolutely foreclose the introduction of a therapeutic communication. When a therapist had reasonable cause to believe a patient was dangerous and that contacting police would prevent harm and facilitate the patient's hospitalization, the patient's statements fell within a dangerous patient exception to the privilege. State v. Agacki, 226 Wis. 2d 349,595 N.W.2d 31 (Ct. App. 1999).

Under the Schiffra test, an *in camera* inspection of the victim's mental health records was allowed. The defendant established more than the mere possibility that the requested records might be necessary for a fair determination of guilt or innocence. State v. Walther, 2001 W I App 33,240 Wis. 2d 619,623 N.W.2d 205.

Release of records containing information of previous assaultive behavior by a nursing home resident was not prohibited by the physician--patientprivilege. **A** nursing home resident does not have a reasonable expectation of privacy in assaultive conduct. The information may be released by court order. Crawford v. Care Concepts, Inc. 2001 WI App 45,243 Wis. 2d 119, 625 N.W.2d 876.

An in camera inspection of confidential records under Schiffra is not restricted to mental health records. State v. Navarro, 2001 WI App 225, 248 Wis. 2d 396, 636 N.W.2d 481.

The preliminary showing for an in camera review of a victim's mental health records requires a defendant to set forth. in good faith, a specific factual basis demonstrating a reasonable likelihood that the records contain relevant information necessary to a determination of guilt or innocence and **is** not merely cumulative of other evidence available to the defendant. The information will be "necessary to a determination of guilt or innocence" if it "tends to create a reasonable doubt that might not otherwise exist. State v. Green, 2002 WI 68,253 Wis. 2d 356,646 N.W.2d 298.

The privilege under this section is not a principle of substantive law, hut merely an evidentiary rule applicable at all stages of civil arid criminal proceedings, except actual trial on the merits in homicide cases. 64 Atty. Gen. 82.

A person claiming a privilege in a communication with a person who was not a medical provider under sub. (1) (d) to (g) lias the burden of establishing that he or she reasonably believed the person to be a medical provider. U.S. v. Schwenson, 942 F. Supp. 902 (1996).

905.045 Domestic violence or sexual assault advocate–victim privilege. (1) DEFINITIONS. In this section:

(a) "Abusive conduct" means abuse, as defined in **s.** 813.122 (1) (a), of a child, as defined in **s.** 48.02 (2), interspousal battery, as described under **s.** 940.19 or 940.20 (1m), domestic abuse, as defined ins. 813.12 (1) (am), or sexual assault under **s.** 940.225.

(b) "Advocate" means an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim.

(c) **A** communication or information **is** "confidential" if not intended to be disclosed to 3rd persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or information, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services.

(d) "Victim" means an individual who has been the subject of abusive conduct or who alleges that he or she has been the subject

of abusive conduct. It is immaterial that the abusive conduct has not been reported to any government agency.

(2) GENERAL RULE OF PRIVILEGE. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, an advocate who is acting in the scope of his or her duties as an advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the victim, by the victim's guardian or conservator, or by the victim's personal representative if the victim is deceased. The advocate may claim the privilege on behalf of the victim. The advocate's authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. Subsection *(2)* does not apply to any report concerning child abuse that an advocate is required to make under s. 48.981.

(5) RELATIONSHIP TO S. 905.04. If a communication or information that is privileged under sub. (2) is also a communication or information that is privileged under s. 905.04 (2), the provisions of s. 905.04 supersede this section with respect to that communication or information.

History: 2001 a. **109.**

905.05 Husband–wife privilege. (1) GENERAL KULE OF PRIVILEGE. A person has a privilege to prevent the person's spouse or former spouse from testifying against the person as to any private communication by one to the other made during their marriage.

(2) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person or by the spouse on the person's behalf. The authority of the spouse to do so is presumed in the absence of evidence to the contrary.

(3) EXCEPTIONS. There is no privilege under this rule:

(a) If both spouses or former spouses are parties to the action.

(bj In proceedings in which one spouse or former spouse is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a 3rd person committed in the course of committing a crime against the other.

(c) In proceedings in which a spouse or former spouse is charged with a crime of pandering or prostitution.

(d) If one spouse or former spouse has acted as the agent of the other and the private communication relates to matters within the scope of the agency.

History: Sup. Ct. Order. 59 Wis. 2d R1, R130 (1973); 1991 a. 32.

Cross–reference: As to testimony of husband and wife in paternity action regarding child horn in wedlock, see s. 891.39.

A wife's testimony as to statements made by her husband was admissible when the statements were made in the presence of 2 witnesses. Abraham v. State, 47 Wis. 2d 44,176 N.W.2d 349 (1970).

Spouses can be compelled to testify as to whether the other was working or collecting unemployment insurance, since such facts are known to 3rd persons. Kain v. State, 48 Wis. 2d 212. 179 N.W.2d 777 (1970).

A wife's observation. without her husband's knowledge, of her husband's criminal act committed on a public street was neither a "communication" nor "private" within meaning of sub. (1). State v. Sabin, 79 Wis. 2d 302, 255 N.W.2d 320 (1977).

"Child" under sub. (3) (b) includes a foster child. State v. Michels, 141 Wis. 2d 81, 414 N.W.2d 311 (Ct. App. 1987).

905.06 Communications to members of the clergy. (1) DEFINITIONS. As used in this section:

(a) A "member of the clergy" is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(b) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(2) GENERAL RULE OF PRIVILEGE. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as a spiritual adviser.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The member of the clergy's authority so to do is presumed in the absence of evidence to the contrary.

History: Sup. Ct. Order, 59 Wis. 2d R1, R135 (1973); 1991 a. 32.

An out–of–court disclosure by a priest that the defendant would lead police to the victim's grave was not privileged under this section. State v. Kunkel, 137 Wis. 2d 172,404 N.W.2d 69 (Ct. App. 1987).

The privilege under sub. (1) hclongs to the person against whom testimony is being offered. While an accused may invoke the privilege to prevent his or her spouse from testifying against him or her, the witness spouse may not not invoke it to prevent his or her own testimony Umhoefer v. Police and Fire Commission of the City of Mequon, 2002 WI App 217, ___ Wis. 2d ___, 652 N.W.2d 412.

Should Clergy Hold the Priest–Penitent Privilege? Mazza. 82 MLR 171 (1998).

905.065 Honesty testing devices. (1) DEFINITION. In this section, "honesty testing device" means a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty.

(2) GENERAL RULE OF THE PRIVILEGE. A person has a privilege to refiise to disclose and to prevent another from disclosing any oral or written communications during or any results of an examination using an honesty testing device in which the person was the test subject.

(3) WHO MAY CLAIM PRIVILEGE. The privilege may be claimed by the person, by the person's guardian or conservator or by the person's personal representative, if the person is deceased.

(4) EXCEPTION. There is no privilege under this section if there is a valid and voluntary written agreement between the test subject and the person administering the test.

History: 1979 c. 319.

A distinction exists between an inquiry into the taking of a polygraph and an inquiry into its results. An offer to take a polygraph is relevant to an assessment of an offeror's credibility. State v. Wofford, 202 Wis. 2d 524, 551 N.W.2d 46 (Ct. App. 1996).

The results of polygraph examinations are inadmissible in civil cases. While an offer to to take a polygraph examination may he relevant to the offeror'scredibility, that a person agreed to a polygraph at the request of law enforcement has not been found admissible and could not be without proof that the person believed the results would accurately indicate whether he or she was lying. Estate of Neumann v. Neumann, 2000 WI App 61, 242 Wis. 2d 205,626 N.W.2d 821.

905.07 Political vote. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

History: Sup. Ct. Order, 59 Wis. 2d R1, R139 (1973); 1991 a. 32.

905.08 Trade secrets. A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret as defined in s. 134.90 (1) (cj, owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance ofjustice may require.

History: Sup. Ct. Order. 59 Wis. 2d R1, R140 (1973); 1985 a. 236.

905.09 Law enforcement records. The federal government or a state or a subdivision thereof has a privilege to refiise to disclose investigatory files, reports and returns for law enforcement purposes except to the extent available by law to a person other than the federal government, a state or subdivision thereof.

The privilege may be claimed by an appropriate representative of the federal government, a state or a subdivision thereof.

History: Sup. Ct. Order, 59 Wis. 2d R1, R142 (1973).

905.10 Identity of informer. (1) RULE OF PRIVILEGE. The federal govcrnment or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(2) WHO MAY CLAIM. The privilege may be claimed by an appropriate representative of the federal government, regardless of whether the information was furnished to an officer of the government or of a state or subdivision thereof. The privilege may be claimed by an appropriate representative of a state or subdivision if the information was furnished to an officer thereof.

(3) EXCEPTIONS. (a) *Voluntary disclosure; informer a witness.* No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the infonner appears as a witness for the federal government or a state or subdivision thereof.

(b) *Testimony on merits.* If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the federal government or a state or subdivision thereof is a party, and the federal government or a state or subdivision thereof invokes the privilege, the judge shall give the federal government or a state or subdivision thereof an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits but the judge may direct that testimony be taken if the judge finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the federal government or a state or subdivision thereof elects not to disclose the informer's identity, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on the judge's own motion. In civil cases, the judge may make an order that justice requires. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the federal government, state or subdivision thereof. All counsel and parties shall bc permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

(c) *Legality of obtaining evidence.* If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the inforniation was received from an informer reasonably believed to be reliable or credible, the judge may require the identity of the informer to be disclosed. The judge shall on request of the federal government, state or subdivision thereof, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subdivision except a disclosure in camera at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the appropriate federal government, state or subdivision thereof.

History: Sup. Ct. Order, 59 Wis. 2d R1, R143 (1973); 1991 a. 32.

The trial judge incorrectly determined whether an informer's testimony was necessary to a fair trial. The proper test is whether the testimony the informer can give is relevant to an issue material to the defense and necessary to the determination of guilt or innocence. It is not for the judge to determine whether the testimony will he helpful. State v. Outlaw. 108 Wis. 2d 112. 321 N.W.2d 145 (1982).

The application of the infonner privilege to communications tending to identify the infonner and consideration by the trial court under sub. (3) (c) of the privileged information in determining reasonable suspicion for an investigative seizure is discussed. State v. Gordon, 159 Wis. 2d 335,464 NW 9I (Ct. App. 1990).

When the defendant knew an infonnant's identity hut sought to put the infonnant's role as an informant before the jury to support his defense that the infonnant actually committed the crimc. the judge erred in not permitting the jury to hear the evidence. State v. Gerard, IS0 Wis. 2d 327, 509 N.W.2d 112 (Ct. App. 1993).

The state is the holder of the privilege; disclosure by an informer's attorney is not "by the informer's own action." The privilege does not die with the infonner. State v. Lass, 194 Wis. 2d 592,535 N.W.2d 904 (Ct. App. 1995).

The trial court erred when upon finding affidavits of confidential infonnants it, on its won initiative and without contacting either party's attorney, requested additional information from law enforcement. Under the statute. if affidavits are insufficient: the court must hold an in camera hearing and take the testimony of the informants to determine if their testimony is relevant and material to the defendant's defense. State v. Vanmanivong, 2001 WI App 299,249 Wis. 2d 350,638 N.W.2d 348.

When there was sufficient evidence in the record to permit a rational court to conclud that a reasonable probability existed that the informant could provide relevant testimony necessary to a fair determination on the issue of guilt or innocence, the decision to forego an in camera hearing was within the discretion of the trial court. State v. Norfleet, 2002 WI App 140, 254 Wis. 2d 569, 254 N.W.2d 569.

905.11 Waiver of privilege by voluntary disclosure. A person upon whom this chapter confers a privilege against disclosure of the confidential matter or communication waives the privilege if the person or his or her predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This section does not apply if the disclosure is itself a privileged communication.

History: Sup. Ct. Order, 59 Wis. 2d R1, R150 (1973); 1987a. 355; Sup. Ct. Order No. 9343, 179 Wis. 2d xv (1993).

Testimony of an accomplice who waived her privilege is admissible even though she had not been tried or granted immunity. State v. Wells, 51 Wis. 2d 477, 1'87 N.W.2d 328 (1971).

A litigant's request to see his or her file that is in the possession of current or former counsel does not waive the attorney–client and work product privileges and does not allow other parties to the litigation discovery of those files. Borgwardt v. Redlin. 196 Wis. 2d 342, 538 N.W.2d 581 (Ct. App. 1995).

905.12 Privileged matter disclosed under compulsion or without opportunity to claim privilege. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

History: Sup. Ct. Order, 59 Wis. 2d R1, R151 (1973).

905.13 Comment upon or inference from claim of privilege; instruction. (1) COMMENT OR INFERENCE NOT PERMITTED. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(2) CLAIMING PRIVILEGE WITHOUT KNOWLEDGE OF JURY. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) JURY INSTRUCTION. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

(4) APPLICATION; SELF–INCRIMINATION. Subsections (1) to (3) do not apply in a civil case with respect to the privilege against self–incrimination.

History: Sup. Ct. Order, 59 Wis. 2d RI, R153 **(1973);** 1981 c. 390.

The prohibition against allowing comments on or drawing an inference from a 3rd–party witness's refusal to testify on 5th amendment grounds does not deny a criminal defendant's constitutional right to equal protection. State v. Heft, 185 Wis. 2d 289, 517 N.W.2d 494 (1994).

905.14 Privilege in crime victim compensation proceedings. (1) Except as provided in sub. (2), no privilege under this chapter exists regarding communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under ch. 949 in which that condition is an element.

(2) The lawyer client privilege applies in a proceeding under ch. 949.

History: *1979c 189.*

905.15 Privilege in use of federal tax return information. (1) An employee of the department of health and family services, the department of workforce development or a county department under s. 46.215, 46.22 or 46.23 or a member of a governing body of a federally recognized American Indian tribe who is authorized by federal law to have access to or awareness of the federal tax return information of another in the performance of duties under s. 49.10 or 49.45 or 7 USC 2011 to 2049 may claim privilege to refuse to disclose the information and the source or method by which he or she received or otherwise became aware of the information.

(2) An employee or member specified in sub. (1) may not waive the right to privilege under sub. (1) or disclose federal tax return information or the source of that information except as providcd by federal law.

History: 1989 a. 31; 1995 a. 27 ss. 7225, 9126 (19). 9130 (4); 1997 a. **3.**

CHAPTER 938
JUVENILE JUSTICE CODE

SUBCHAPTER VI
DISPOSITION

938.34 Disposition of juvenile adjudged delinquent.

938.34 Disposition of juvenile adjudged delinquent. If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. A disposition under sub. (4m) must be combined with a disposition under sub. (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

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

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

(b) If the juvenile is placed in the juvenile's home under the supervision of an agency or the department, order the agency or department to provide specified services to the juvenile and the juvenile's family, which may include but are not limited to individual, family or group counseling, homemaker or parent aide services, respite care, housing assistance, day care or parent skills training.

(c) Order the juvenile to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in the order.

(29) VOLUNTEERS IN PROBATION PROGRAM. If the juvenile is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the juvenile's county of residence and if the court determines that volunteer supervision under that volunteers in probation program will likely benefit the juvenile and the community, placement of the juvenile with that volunteers in probation program under such conditions as the court determines are reasonable and appropriate. These conditions may include, but need not be limited to, any of the following:

(a) A directive to a volunteer to provide for the juvenile a role model, informal counseling, general monitoring and monitoring of the conditions established by the court, or any combination of these functions.

(b) Any other disposition that the court may impose under this section.

(2m) TEEN COURT PROGRAM. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the judge determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult.

(c) The juvenile admits or pleads no contest in open court, with the juvenile's parent, guardian or legal custodian present, to the allegations that the juvenile committed the delinquent act.

(d) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act.

(2r) INTENSIVE SUPERVISION. Order the juvenile to participate in an intensive supervision program under s. 938.534.

(3) PLACEMENT. Designate one of the following as the placement for the juvenile:

(a) The home of a parent or other relative of the juvenile, except that the court may not designate the home of a parent or other relative of the juvenile as the juvenile's placement if the parent or other 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 juvenile, and the conviction has not been reversed, set aside or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the court may not designate the name [home] of a person who is not required to be licensed as the juvenile's placement if the person 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 juvenile, and the conviction has not been reversed, set aside or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

NOTE: The bracketed language indicates the correct term. Corrective legislation is pending.

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

(cm) A group home described in s. 48.625 (1m) if the juvenile is at least 12 years of age, is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(e) An independent living situation effective on or after the juvenile's 17th birthday, either alone or with friends, under such supervision as the court considers appropriate, but only if the juvenile is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(f) A secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule, or in a place of non-secure custody designated by the court, subject to all of the following:

1. The placement may be for any combination of single or consecutive days totaling not more than 30. The juvenile shall be given credit against the period of detention or non-secure custody imposed under this paragraph for all time spent in secure detention in connection with the course of conduct for which the detention or non-secure custody was imposed.

2. The order may provide that the juvenile may be released from the secure detention facility, juvenile portion of the jail or place of non-secure custody during specified hours to attend school, to work at the juvenile's place of employment or to attend or participate in any activity which the court considers beneficial to the juvenile.

3. The use of placement in a secure detention facility or in a juvenile portion of a county jail as a disposition under this paragraph is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a disposition.

(39) ELECTRONIC MONITORING. Monitoring by an electronic monitoring system for a juvenile subject to an order under sub. (2), (2r), (3) (a) to (e), (4h) or (4n) who is placed in the community.

(4) TRANSFER OF LEGAL CUSTODY. If it is shown that the rehabilitation or the treatment and care of the juvenile cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the juvenile.

(b) A county department.

(c) A licensed child welfare agency.

(4d) TYPE 2 CHILD CARING INSTITUTION PLACEMENT. Place the juvenile in a Type 2 child caring institution under the supervision of the county department and subject to Type 2 status, as described in s. 938.539, but only if all of the following apply:

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

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the judge determines that any of the conditions specified in sub. (4m) (b) 1., 2. or 3. applies, but that placement in the serious juvenile offender program under sub. (4h) or in a secured correctional facility under sub. (4m) would not be appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection.

(4h) SERIOUS JUVENILE OFFENDER PROGRAM. Place the juvenile in the serious juvenile offender program under s. 938.538, but only if all of the following apply:

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing a violation of s. 939.31, 939.32 (1) (a), 940.03, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (lg), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of 940.02 or 940.05.

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

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing a violation of s. 939.31, 939.32 (1) (a), 940.03, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (lg), (Im) or (1r), 943.32 (2), 948.02 (l), 948.025, 948.30 (2), 948.35 (1)(b) or 948.36 or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of 940.02 or 940.05.

(b) The judge finds that the only other disposition that would be appropriate for the juvenile would be placement of the juvenile in a secured correctional facility under sub. (4m).

(4m) CORRECTIONAL PLACEMENT. Place the juvenile in a secured correctional facility or a secured child caring institution under the supervision of the department or in a secured group home under the supervision of a county department if the juvenile is 12 years of age or over or, if the juvenile is under 12 years of age, in a secured child caring institution under the supervision of the department or in a secured group home under the supervision of a county department, unless the department, after an examination under s. 938.50, determines that placement in a secured correctional facility is more appropriate, but only if all of the following apply:

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

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the judge determines that any of the following conditions applies, but that placement in the serious juvenile offender program under sub. (4h) would not be appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection:

1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), 943.32 (2), 947.013 (1t), (lv) or **(lx),** 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

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

1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), (1m) or (1r), 943.32 (2), 947.013 (It), (Iv) or (1x), 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

2. The juvenile has possessed, used or threatened to use a handgun, as defined in s. 175.35 (1) (b), short–barreled rifle, as defined in s. 941.28 (1) (b), or short–barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

3. The juvenile has possessed or gone armed with a short–barreled rifle or a short–barreled shotgun in violation of s. 941.28 or has possessed or gone armed with a handgun in violation of s. 948.60.

(4n) AFTERCARE SUPERVISION. Subject to s. 938.532 (3) and to any arrangement between the department and a county department regarding the provision of aftercare supervision for juveniles who have been released from a secured correctional facility, a secured child caring institution or a secured group home, designate one of the following to provide aftercare supervision for the juvenile following the juvenile's release from the secured correctional facility, secured child caring institution or secured group home:

(a) The department.

(b) The county department of the county of the court that placed the juvenile in the secured correctional facility, secured child caring institution or secured group home.

(c) The county department of the juvenile's county of legal residence.

(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well–being and needs of the victim, considers it beneficial to the well–being and behavior of the juvenile. Any such order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. Objection by the juvenile to the amount of damages claimed shall entitle the juvenile to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under s. 938.45 (1r) (a).

(am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a secured correctional facility, residential treatment center or other out-of–home placement to contribute a stated percentage of that income towards that restitution.

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

(c) Under this subsection, a court may not order a juvenile who is under 14 years of age to make more than $250 in restitution or to perform more than 40 total hours of services for the victim as restitution.

(5g) SUPERVISED WORK PROGRAM OR OTHER COMMUNITY SERVICE WORK. (a) Order the juvenile to participate in a supervised work program administered by the county department or a community agency approved by the court or other community service work administered by a public agency or nonprofit charitable organization approved by the court.

(am) The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the juvenile reasonable compensation reflecting a reasonable market value of the work performed or it may consist of uncompensated community service work. Community service work may be in lieu of restitution only if also agreed to by the county department, community agency, public agency or nonprofit charitable organization and by the person to whom the restitution is owed. The court may use any available resources, including any community service work program, in ordering the juvenile to perform community service work.

(b) The supervised work program or other community service work shall be of a constructive nature designed to promote the

rehabilitation of the juvenile, shall be appropriate to the age level and physical ability of the juvenile and shall be combined with counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the juvenile's regular attendance at school. Subject to par. (d), the amount of work required shall be reasonably related to the seriousness of the juvenile's offense.

(c) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a supervised work program or other community service work may, for purposes of performing the supervised work or other community service work, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a supervised work program or other community service work is exempt from the permit requirement under s. 103.70 (1).

(d) Under this subsection, a juvenile who is under 14 years of age may not be required to perform more than 40 total hours of supervised work or other community service work, except as provided in subs. (13r) and (14t).

(5m) COMMUNITY SERVICE WORK PROGRAM. Order the juvenile to participate in a youth corps program, as defined in s. 16.22 (1) (dm) or another community service work program, if the sponsor of the program approves the juvenile's participation in the program.

(5r) VICTIM–OFFENDER MEDIATION PROGRAM. Order the juvenile to participate in a victim–offender mediation program if the victim of the juvenile's delinquent act agrees.

(6) SPECIAL TREATMENT OR CARE. (a) If the juvenile is in need of special treatment or care, as identified in an evaluation under s. 938.295 and the report under s. 938.33 (1), order the juvenile's parent to provide the special treatment or care.

(am) An order of special treatment or care under this subsection may include an order committing the juvenile to a county department under s. 51.42 or 51.437 for special treatment or care in an inpatient facility, as defined in s. 51.01 (10), if the evaluation under s. 938.295 and the report under s. 938.33 (1) indicate all of the following:

1. That the juvenile has an alcohol or other drug abuse impairment.

2. That the juvenile is a proper subject for treatment and is in need of inpatient treatment because appropriate treatment is not available on an outpatient basis.

(ap) An order under par. (am) is subject to all of the following:

1. The Commitment may total not more than 30 days.

2. The use of commitment to a county department under s. 51.42 or 51.437 as a disposition under par. (am) is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of that disposition.

(ar) If the parent fails or is financially unable to provide the special treatment or care ordered under par. (a) or (am), the court may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If the court orders a county department under s. 51.42 or 51.437 to provide special treatment or care under par. (a) or (am), the provision of that special treatment or care shall be subject to conditions specified in ch. 51, except that an order under par. (am) may not be extended. An order of special treatment or care under this subsection may not include an order for the administration of psychotropic medication.

(b) Payment for alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 938.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 938.362.

(6m) INTEGRATED SERVICE PLAN. If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, order that an integrated service plan be developed and implemented.

***(6r)* ALCOHOL OR DRUG TREATMENT OR EDUCATION.** (a) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the juvenile to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile as to whether the juvenile is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the juvenile to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile about the juvenile's attendance at the program.

(c) Payment for the court-ordered treatment or education under this subsection in counties that have a pilot program under s. 938.547 shall be in accordance with s. 938.361.

(6s) DRUG TESTING. If the report under s. 938.33 (1) indicate that the juvenile is in need of treatment for the use or abuse of controlled substances or controlled substance analogs, order the juvenile to submit to drug testing under a drug testing program that the department shall promulgate by rule.

(7d) EDUCATION PROGRAM. (a) Except as provided in par. (d), order the juvenile to attend any of the following:

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

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

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

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

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

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

(d) This subsection does not apply to a juvenile who is a child with a disability, as defined under s. 115.76 (5).

(7g) EXPERIENTIAL EDUCATION. Order the juvenile to participate in a wilderness challenge program or other experiential education program.

(7j) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other non-school days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Subsection (5g) applies to any community service work performed by a juvenile under this subsection.

(7n) JUVENILE OFFENDER EDUCATION PROGRAM. Order the juvenile to participate in an educational program that is designed to deter future delinquent behavior by focusing on such issues as

decision making, assertiveness instead of aggression, family and peer relationships, self–esteem, identification and expression of feelings, alcohol and other drug abuse recognition and errors in thinking and judgment.

(7r) VOCATIONAL TRAINING. If the report under s. 938.33 (1) recommends that the juvenile is in need of vocational assessment, counseling and training, order the juvenile to participate in that assessment, counseling and training.

(7w) DAY TREATMENT PROGRAM. If the report under s. 938.33 (1) indicates that the juvenile has specialized educational needs, order the juvenile to participate in a day treatment program.

(8) FORFEITURE. Impose a forfeiture based upon a determination that this disposition is in the best interest of the juvenile and in aid of rehabilitation. The maximum forfeiture that the court may impose under this subsection for a violation by a juvenile is the maximum amount of the fine that may be imposed on an adult for committing that violation or, if the violation is applicable only to a person under 18 years of age, $100. Any such order shall include a finding that the juvenile alone is financially able to pay the forfeiture and shall allow up to 12 months for payment. If the juvenile fails to pay the forfeiture, the court may vacate the forfeiture and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with a notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the juvenile. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(8d) DELINQUENCY VICTIM AND WITNESS ASSISTANCE SURCHARGE. (a) In addition to any other disposition imposed under this section, the court shall impose a delinquency victim and witness assistance surcharge of $20.

(b) The clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer under s. 59.25 (3) (f) 2.

(c) If a juvenile placed in a secured correctional facility or a secured child caring institution fails to pay the surcharge under par.(a), the department shall assess and collect the amount owed from the juvenile's wages or other moneys. If a juvenile placed in a secured group home fails to pay the surcharge under par.(a), the county department shall assess and collect the amount owed from the juvenile's wages or other moneys. *Any* amount collected shall be transmitted to the state treasurer.

(d) If the juvenile fails to pay the surcharge under par.(a), the court may vacate the surcharge and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than 5 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with a notice of suspension clearly stating that the suspension is for failure to pay a surcharge imposed by the court. If the surcharge is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the juvenile.

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

(13r) VIOLENT VIOLATION IN A SCHOOL ZONE. (a) If the juvenile is adjudicated delinquent under a violation of a violent crime law specified in s. 939.632 (1) (e) in a school zone, as defined in s. 939.632 (1) (d), the court may require that the juvenile participate for 100 hours in a supervised work program under sub.(5g) or perform 100 hours of other community service work.

(b) The court shall not impose the requirement under par.(a) if the court determines that the person would pose a threat to public safety while completing the requirement.

(13t) GRAFFITI VIOLATION. If the juvenile is adjudicated delinquent under a violation of s. 943.017, the court may require that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under sub.(5g) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the juvenile has not attained 14 years of age the maximum number of hours is 40.

(14d) HATE VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have committed a violation under circumstances in which, if committed by an adult, the adult would be subject to a penalty enhancement under s. 939.645, the court may order any one or more of the following dispositions:

(a) That the juvenile make restitution under sub.(5).

(b) That the juvenile participate in a supervised work program or other community service work under sub.(5g) or (5m).

(c) That the juvenile participate in a victim–offender mediation program under sub.(5r) or otherwise apologize to the victim.

(d) That the juvenile participate in an educational program under sub.(7n) that includes sensitivity training or training in diversity.

(14m) VIOLATION INVOLVING A MOTOR VEHICLE. Restrict or suspend the operating privilege, as defined in s. 340.01 (40), of a juvenile who is adjudicated delinquent under a violation of any law in which a motor vehicle is involved. If the court suspends a juvenile's operating privilege under this subsection, the court shall immediately take possession of the suspended license and forward it to the department of transportation together with a notice stating the reason for and duration of the suspension. If the court limits a juvenile's operating privilege under this subsection, the court shall immediately notify the department of transportation of that limitation.

(14p) COMPUTER VIOLATION. If the juvenile is found to have violated s. 943.70, place restrictions on the juvenile's use of computers.

(14r) VIOLATIONS RELATING TO CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS.

(a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated ch. 961, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the notice of suspension clearly stating that the suspension or revocation is for a violation of ch. 961.

(b) This subsection does not apply to violations under s. 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or if the juvenile does not currently possess a valid operator's license issued under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible and applies for issuance or reinstatement of an operator's license under ch. 343.

(14s) POSSESSION OF CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS. (a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (3g), the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500.

(am) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (1) or (1m), the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not less than $250 nor more than $500.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500.

(b) After ordering a disposition under par.(a) or (am), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the dispositional order. If the court stays a dispositional order under this paragraph, the court shall enter an additional order requiring the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in a court–approved pupil assistance program provided by the juvenile's school board or an alcohol or other drug abuse education program. The juvenile's participation in a court–approved pupil assistance program under this subdivision is subject to the approval of the juvenile's school board.

(c) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under this subsection and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(d) If the juvenile completes the alcohol or other drug abuse treatment program, court–approved pupil assistance program or court–approved alcohol or other drug abuse education program, the approved treatment facility, court–approved pupil assistance program or court–approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(e) If an approved treatment facility, court–approved pupil assistance program or court–approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating in, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program, a court–approved pupil assistance program or a court–approved alcohol or other drug abuse education program, the court shall impose the original disposition under par.(a) or (am).

(14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or on the premises of a scattered–site public housing project, as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours in a supervised work program or other community service work under sub.(5g).

(15) DEOXYRIBONUCLEIC ACID ANALYSIS REQUIREMENTS. (a) 1. If the juvenile is adjudicated delinquent on the basis of a violation of s. 940.225, 948.02 (1) or (2) or 948.025, the court shall require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or 2. may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(b) The department of justice shall promulgate rules providing procedures for juveniles to provide specimens under par.(a) and for the transportation of those specimens to the state crime laboratories under s. 165.77.

Cross Reference: See also **ch.** *Jus* **9,** *Wis.* adm code.

(15m) SEX OFFENDER REPORTING REQUIREMENTS. (am) Except as provided in par.(bm), if the juvenile is adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the juvenile 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 juvenile report under s. 301.45.

(bm) If the juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy, or attempt 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 juvenile was not the victim's parent, the court shall require the juvenile to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m).

(c) In determining under par.(am) whether it would be in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.

2. The relationship between the juvenile and the victim of the violation.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

4. 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.

5. The probability that the juvenile will commit other violations in the future.

7. Any other factor that the court determines may **be** relevant to the particular case.

(d) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the court may order the juvenile to continue to comply with the reporting requirements until his or her death.

(e) If the court orders a juvenile 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 of delinquency 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 of delinquency has been reversed, set aside or vacated.

(16) STAY OF ORDER. After ordering a disposition under this section, enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If

the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver. If a hearing is held, the court shall notify the parent, juvenile, guardian and legal custodian, all parties bound by the original dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, **185;** 2001 a. 16, 59, 69, 109.

Cross Reference: See also ch. DOC 392, Wis. adm. code. Sub.(4h) does not encompass similar offenses from other jurisdictions. A juvenile may not he placed in the serious juvenile offender program on the basis that the juvenile is adjudicated delinquent for violating similar statutes in other jurisdictions. State v. David L.W. 213 Wis. 2d 277,570 N.W.2d 252 (Ct. App. 1997).

Sub.(16) permits a court to stay imposition of a dispositional order, including revisions. **Failure** to *comply* can trigger commencement of the stayed portion commencing when the stay is lifted and terminating upon the completion of the term stated in the stayed order. State v. Kendall G. 2001 WI App 95, 243 Wis. 2d 67, 625 Wis. 2d 918.

Placement in the serious juvenile offender program under sub.(4h) **must** occur at **an** original disposition. It is not a disposition to extend, revise, or change a placement already in effect. State v. Terry T. 2002 WI App 81, 251 Wis. **2d** 462, 643 N.W.2d 175.

Dispositions: Increased Options. Wis. Law. Apr. 1996.

CHAPTER 940
CRIMES AGAINST LIFE AND BODILY SECURITY

BODILY SECURITY

940.22 Sexual exploitation by therapist; duty to report
940.225 Sexual assault.

940.22 Sexual exploitation by therapist; duty to report.

(1) DEFINITIONS. In this section: (a) "Department" means the department of regulation and licensing.

(b) "Physician" has the meaning designated in s. 448.01 (5).

(c) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(d) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

(i) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist–patient or therapist–client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class F felony. Consent is not an issue in an action under this subsection.

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

(2) *SEXUAL* CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist–patient or therapist–client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

(3) REPORTS OF SEXUAL CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub.(2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par.(a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub.(2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par.(a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars.(a) to (c) is guilty of a Class A misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub.(3) and maintained by the department, examining boards, affiliated credentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub.(3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub.(3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub.(3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another report was received regarding the same subject.

(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.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

History: 1983 a. **434; 1985** a. **275; 1987** a. **352,380; 1991** a. 160; **1993** a. **107; 1995** a. **300; 2001** a. 109.

This section applies to persons engaged **in** professional therapist–patient relationships. A teacher who conducts informal counseling is not engaged as a professional therapist. State v. Amhrose, **196** Wis. 2d **768, 540** N.W.2d **208** (Ct. App. **1995).**

940.225 Sexual assault. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:

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

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or **(k)** and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub.(5) (b) 2. with a person without the consent of that person is guilty of a Class G felony.

NOTE: Sub. (3) is shown as amended eff. 2–1-03 by 2001 Wis. Act **109.** Prior to 2–1-03 it reads:

(3) THIRD **DEGREE SEXUAL** ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of **a** Class D felony. Whoever has sexual contact in the manner described **in** sub. ***(5)*** (h) **2.** with a person without the consent of that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub.(3), whoever has sexual contact with a person without the consent of that person is guilty of ***a*** Class **A** misdemeanor.

(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub.(2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2): **(b) A** person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) **A** person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section: (ag) ''Inpatient facility" has the meaning designated in s. 51.01 (1*0)*.

(ai) "Intoxicant" means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. "Intoxicant" does not include any alcohol beverage.

(am) "Patient" means any person who does any of the following: 1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or **(k),** from an employee of a facility or program or from a person providing services under contract with a facility or program. 2. Arrives at a facility or program under s. 940.295 (2) **(b)**, (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 **(2)** (b), (c), (h) or **(k).**

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however ,slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE NOT A BAR TO PROSECUTION. **A** defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235,236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220; 2001 a. 109.

Legislative Council Note, 1981: Presently, [in sub.(5) (a)] the definition of "sexual intercourse" in the sexual assault statute includes any intrusion of any part of a person's body or of any object into the genital or anal opening of another person. This proposal clarifies that the intrusion of the body part or object may he caused by the direct act of the offender (defendant) or may occur as a result of an act by the victim which is done in compliance with instructions of the offender (defendant). [Bill 630–S] Failure to resist is not consent under sub.(4). State v. Clark, 87 Wis. 2d 804, 275 N.W.2d 715 (1979).

Injury by conduct regardless of life is not a lesser–included crime of first–degree sexual assault. Hagenkord v. State, 94 Wis. 2d 250,287 N.W.2d 834 (Ct. App. 1979).

Separate acts of sexual intercourse, each different in kind from the others and differently defined in the statutes, constitute separate chargeable offenses. State v. Eisch, 96 Wis. 2d 25,291 N.W.2d 800 (1980).

The trial court did not err in denying the accused's motions to compel psychiatric examination of the victim and for discovery of the victim's past addresses. State v. Lederer, 99 Wis. 2d 430,299 N.W.2d 457 (Ct. App. 1980).

The verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. State v. Lomagro, 113 Wis. 2d 582,335 N.W.2d 583 (1983).

A jury instruction that touching the "vaginal area" constituted sexual contact was correct. State v. Morse, 126 Wis. 2d 1, 374 N.W.2d 388 (Ct. App. 1985).

"Unconscious" as used in sub.(2) (d) is a loss of awareness that may be caused by sleep. State v. Curtis, 144 Wis. 2d 691, 424 N.W.2d 719 (Ct. App. 1988).

The probability of exclusion and paternity are generally admissible in a sexual assault action in which the assault allegedly resulted in the birth of a child, but the probability of paternity is generally admissible. HLA and red blood cell test results showing the paternity index and probability of exclusion were admissible statistics. State v. Hartin, 145 Wis. 2d 1, 426 N.W.2d 320 (1988).

Attempted fourth-degree sexual assault is not an offense under Wisconsin law. State v. Cvorovic, 158 Wis. 2d 630,462 N.W.2d 897 (Ct App. 1990).

The "use or threat of force or violence" under sub.(2) (a) does not require that the force be directed toward compelling the victim's submission, but includes forcible contact or the force used as the means of making contact. State v. Bonds. 165 Wis. 2d 27,477 N.W.2d 265 (1991).

A dog may be a dangerous weapon under sub.(1) (b). State v. Sinks, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

Convictions under both subs.(1) (d) and (2) (d) did not violate doublejeopardy. State v. Sauceda, 168 Wis. 2d 486, 485 N.W.2d 1 (1992). A defendant's lack ***of*** intent to make a victim believe that he was armed was irrelevant in finding a violation of sub.(1) (b); if the victim's belief that the defendant was armed was reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Sub.(2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation *similar*, but not identical, to the facts of the case was inadmissible. State v. Pittman, 174 Wis. 2d 255,496 N.W.2d 74 (1993).

Convictions under both sub.(2) (a) and (e) did not violate double jeopardy. State v. Selmon, 175 Wis. 2d 155, 877 N.W.2d 498 (Ct App. 1993).

"Great bodily harm" is a distinct element under sub.(1) (a) and need not be caused by the sexual act. State v. Schambow, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

Intent is not an element of sub.(2) (a); lack of an intent element does not render this provision constitutionally invalid. State v. Neumann, 179 Wis. 2d 687, 508 N.W.2d 54 (Ct. App. 1993).

A previous use of force, and the victim's resulting fear, was an appropriate basis for finding that a threat of force existed under sub.(2) (a). State v. Speese, 191 Wis. 2d 205, 528 N.W.2d 63 (Ct. App. 1995).

Violation of any of the provisions of this section does not immunize the defendant from violating the same or another provision in the course of sexual misconduct. Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub.(1) (d). State v. Kruzycki, 192 Wis. 2d 509, 531 N.W.2d 429 (Ct. App. 1995).

Sub.(2) (c) is not unconstitutionally vague. State v. Smith, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6,232 Wis. 2d 561,605 N.W.2d 199.

Conviction on 2 counts of rape, for acts occurring 25 minutes apart in the same location, did not violate double jeopardy. Harrell v. Israel, 478 F. Supp. 752 (1979).

A conviction for attempted 1st degree sexual assault based on circumstantial evidence did not deny due process. Upshaw v. Powell, 478 F. Supp. 1264 (1979).

CHAPTER 948

CRIMES AGAINST CHILDREN

948.01 Definitions.
948.015 Other offenses against children.
948.02 Sexual assault of a child.
948.025 Engaging in repeated acts of sexual assault of the same child.
948.03 Physical abuse of a child.
948.04 Causing mental harm to a child.
948.05 Sexual exploitation of a child.
948.055 Causing a child to view or listen to sexual activity.
948.06 Incest with a child.
948.07 Child enticement.
948.075 Use of a computer to facilitate a child sex crime.
948.08 Soliciting a child for prostitution.
948.09 Sexual intercourse with a child age 16 or older.
948.095 Sexual assault of a student by a school instructional staff person.
948.10 Exposing genitals or pubic area.
948.11 Exposing a child to harmful material or harmful descriptions or narrations.
948.12 Possession of child pornography.
948.13 Child sex offender working with children.
948.20 Abandonment of a child.
948.21 Neglecting a child.
948.22 Failure to support.
948.23 Concealing death of child.
948.24 Unauthorized placement for adoption.
948.30 Abduction of another's child; constructive custody.
948.31 Interference with custody by parent or others.
948.35 Solicitation of a child to commit a felony.
948.36 Use of child to commit a Class **A** felony.
948.40 Contributing to the delinquency of a child.
948.45 Contributing to truancy.
948.50 Strip search by school employee.
948.51 Hazing.
948.55 Leaving or storing a loaded fireann within the reach or easy access of a child.
948.60 Possession of a dangerous weapon by a person under 18.
948.605 Gun–free school zones.
948.61 Dangerous weapons other than firearms on school premises.
948.62 Receiving stolen property from a child.
948.63 Receiving property from a child.
948.70 Tattooing of children.

Cross Reference: See definitions in s. 939.22

948.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly rcquircs a different construction:

(1) "Child" means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, "child" does not include a person who has attained the age of 17 years.

(1d) "Exhibit," with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.

(1g) "Joint legal custody" has the meaning given in s. 767.001 (1s).

(1r) "Legal custody" has the meaning given in s. 767.001 **(2).**

(2) "Mental harm" means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. "Mental harm" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(3) "Person responsible for the child's welfare" includes the child's parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, instihition or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to cxcrcise temporary control or care for the child.

(3m) "Physical placement" has the meaning given in s. 767.001 *(5)*.

(3r) "Recording" includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.

(4) "Sadomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any of the following:

(a) Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object. of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(6) "Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(7) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by a person or upon the person's instruction. The emission of semen is not required;

(b) Bestiality;

(c) Masturbation;

(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

(e) Lewd exhibition of intimate parts.

History: 1987a.332; 1989 a. 31: 1993a.446; 1995 a. 27, 67, 69, 100, 214; 2001 a. 16.

Instructions were proper that told the jury that "lewd" under sub. (7) (e), when applied to photographs, is not mere nudity but requires the display of the genital area and sexual suggestiveness as determined by the jury in the use of common sense. State v. Petrone, 161 Wis. 2d 530,468 N.W.2d 676 (1991).

When a defendant allows sexual contact initiated by a child, the defendant is guilty of intentional touching as defined in sob. (5). State v. Traylor, 170 Wis. 2d 393,489 N.W.2d 626 (Ct. App. 1992).

The definition of "parent" in sub. (3) is all–inclusive; a defendant whose paternity was admitted but had never been adjudged was a "parent." State v. Evans, 171 Wis. 2d 471, 492 N.W.2d 141 (1992).

A live–in boyfriend can be a person responsible for the welfare of a child under sub. (3) if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409, 542 N.W.2d 774 (1996).

The phrase "by the defendant or upon the defendant's instruction" in sub. (6) modifies the entire list of acts and establishes that for intercourse to occur the defendant either had to perform one of the actions on the victim or instruct the victim to perform one of the actions on himself or herself. State v. Olson, 2000 WI App 158,238 Wis. 2d 74, 616 N.W.2d 144.

948.015 Other offenses against children. In addition to the offenses under this chapter, offenses against children include, but are not limited to, the following:

(1) Sections 103.19 to 103.32 and 103.64 to 103.82, relating to employment of minors.

(2) Section 118.13, relating to pupil discrimination.

(3) Section 125.07, relating to furnishing alcohol beverages to underage persons.

(4) Section 253.11, relating to infant blindness.

(5) Section 254.12, relating to applying lead-bearing paints or selling or transferring a fixture or other object containing a lead-bearing paint.

(6) Sections 961.01 (6) and (9) and 961.49, relating to delivering and distributing controlled substances or controlled substance analogs to children.

(7) Section 444.09 (4), relating to boxing.

History: 1987 a. 332; 1989 **a. 31; 1993** a. **27;** 1995 a. 448.

948.02 Sexual assault of a child. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.

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

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class BC felony.

(3) FAILURE TO ACT. **A** person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class F felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

NOTE: Sub. (3) is shown as amended eff. 2–1–03 by 2001 Wis. Aet 109. Prior to 2–1–03 it reads:

(3) FAILURE TO ACT. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class C felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure *to* act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(3m) PENALTY ENHANCEMENT; SEXUAL ASSAULT BY CERTAIN PERSONS. If a person violates sub. (1) or (2) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

NOTE: Sub. (3m) is repealed eff. 2–1–03 by 2001 Wis. Act 109.

(4) MARRIAGE NOT A BAR TO PROSECUTION. **A** defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1987 a. **332;** 1989 a. **31;** 1995 a. 14, 69; **2001** a. **109.**

Relevant evidence in child sexual assault cases is discussed. In Interest of Michael R.B. 175 Wis. 2d **713,499** N.W.2d 641 **(1993).**

Limits relating to expert testimony regarding child sex abuse victims is discussed. State **v.** Hernandez, 192 Wis. 2d **251, 531** N.W.2d **348** (Ct. App. **1995).**

The criminalization, under sub. (2), of consensual sexual relations with a child does not violate the defendant's constitutionally protected privacy rights. State **v.** Fisher. 211 Wis. 2d **664,565** N.W.2d **565** (Ct. App. **1997).**

Second degree sexual assault under sub. **(2)** is a lesser included offense of first degree sexual assault under sub. (1). Stale v. Moua, **215** Wis. 2d **510, 573** N.W.2d 210 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not bc informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI **6,132** Wis. 2d **561, 605** N.W.2d **199.**

Expert evidence of sexual immaturity **is** relevant to a preadolescent's affirmative defense that he or she is not capable of having sexual contact with the purpose of becoming sexually aroused or gratified. State v. Stephen T. **2002** WI App **3,250** Wis. **2d 26.643** N.W.2d **151.**

The constitutionality of this statute is upheld. Sweeney v. Smith, 9 F. Supp. 2d **1026** (1998).

948.025 Engaging in repeated acts of sexual assault of the same child. (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of:

(a) **A** Class B felony if at least 3 of the violations were violations of s. 948.02 (1).

(b) **A** Class C felony if fewer than 3 of the violations were violations of s. 948.02 (1).

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

(1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of a Class B felony.

(2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) or (2) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) or (2).

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

(2) If an action under sub. (1) is tried to a jury. in order *to* find the defendant guilty the members of the jury must unanimously agree that at least 3 violations occurred within the time period applicable under sub. (1) hut need not agree on which acts constitute the requisite number.

(2m) If a person violates sub. (1) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

NOTE: Sub. (2m) is repealed eff. 2–1–03 by 2001 Wis. Act 109.

(3) The state may not charge in the same action a defendant with a violation of this section and with a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.075, 948.08, 948.10, 948.11, or 948.12, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

History: 1993 a. 227; 1995 a. 14; **2001 a. 109.**

This section does not violate the right to a unanimous verdict or to due process. State v. Johnson. 2001 WI 52, 243 Wis. **2d 365,627** N.W. 2d 455.

948.03 Physical abuse of a child. (1) DEFINITIONS. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whocver intentionally causes great bodily harm to a child is guilty of a Class E felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class H felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class F felony.

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

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(b) Whoever intentionally causes bodily harm to a child is gnilty of a Class D felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class C felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class G felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class I felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class H felony.

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

(3) **RECKLESS CAUSATION OF BODILY HARM.** (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class D felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class E felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class D felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) **A** person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that **is** caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class H felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

NOTE: Sub. (4) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(4) **FAILING TO ACT TO PREVENT BODILY HARM.** (a) **A** person responsible for the child's welfare is guilty of **a** Class C felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of **a** Class D felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(5) PENALTY ENHANCEMENT; ABUSE ***BY*** CERTAIN PERSONS. If a person violates sub. (2) or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

NOTE: Sub. ***(5)*** is repealed eff. 2–1–03 by 2001 Wis. Act 109.

(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under **s.** 48.981 (3) (c) 4. or 448.03 (6) in lieu of medical or surgical treatment.

History: 1957 a. 332; 2001 a. 109.

To obtain a conviction for aiding and abetting a violation of **sub.** ***(2)*** or (3). the state must prove conduct that as a matter of objective fact aids another in executing the **crime.** State v. Rundle, 176 Wis. 2d 985,500 N.W.2d 916 (Ct. App. 1993).

A live-in boyfriend can be a person responsible for the welfare of a child under sub. ***(5)*** if he was used by the child's **legal** guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409.542 N.W.2d 774 (1996).

948.04 Causing mental harm to a child. (1) Whoever **is** exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well–being of the child is guilty of a Class F felony.

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

(1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well–being of the child is guilty of a Class C felony.

(2) A person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

NOTE: Sub. ***(2)*** is shown as amended eft. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person has caused, is causing or will canse mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

History: 1957 a. 332; 2001 a. 109.

948.05 Sexual exploitation of a child. (1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class F felony:

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

(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class C felony:

(a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.

(b) Records or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of **a** child engaging in sexually explicit conduct is guilty of a Class F felony if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

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

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of **a** child engaging in sexually explicit conduct is gnilty of a Class C felony if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of **18** years.

(2) **A** person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) is guilty of a Class F felony.

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

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) is gnilty of a Class C felony.

(3) It **is** an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or **(2)** if the defendant had reasonable cause to believe that the child had attained the age of 18 years. **A** defendant

who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109.

"import" under sub. (1) (c) means bringing in from an external source and does not require a commercial element or exempt personal use. State v. Bruckner, 151 Wis. 2d 833,447 N.W.2d 376 (Ct. App. 1989).

The purposes of ss. 948.05. child exploitation, and 948.07. child enticement, are distinct and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango. 2000 WI 89, 236 Wis. 2d 721. 613 N.W.2d 833.

948.055 Causing a child to view or listen to sexual activity. (1) Whoever intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct may be pcnalizcd as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

(2) Whoever violates sub. (1) is guilty of:

(a) **A** Class F felony if the child has not attained the age of 13 years.

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

(a) A Class C felony if the child has not attained the age of 13 years.

(b) **A** Class H felony if the child has attained the age of 13 years but has not attained the age of 18 years.

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

(b) A Class D felony if the child has attained the age of 13 years **but has not attained the age of** 18 **years.**

History: 1987 a. 334; 1989 a. 359; 1993 a. 218 ss. 6.7; Stats. 1993 s. 948.055; 1995 a. 67; 2001 a. 109.

948.06 Incest with a child. Whoever does any of the following is guilty of a Class C felony:

NOTE: 948.06 **(intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:**

948.06 Incest with a child. Whoever does any of the following is guilty of a Class BC felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin; or

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person related to the child by blood or adoption in a degree of kinship closer than 2nd cousin has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;

(c) Fails to take that action; and

(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

History: 1987 a. 332: 1995 a. 69; 2001 a. 109.

948.07 Child enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:

NOTE: 948.07 **(intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:**

948.07 Child enticement. Whoever, with *intent* to commit any of *the* following acts, causes or attempts to cause any child who has not attained the age of 18 **years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:**

(1) Having sexual contact or sexual intercourse with the child in violation of s. 945.02 or 948.095.

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Recording the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

History: 1987 a. 332; 1995 a. 67, 69, 448, 456; 2001 a. 16, 109.

The penalty scheme of sub. (3) is not unconstitutionally irrational. That the statute, unlike sub. (1). did not distinguish between victims 16 years old or older and other children victims is a matter for the legislature. State v. Hanson, 182 Wis. 2d 481, 513 N.W.2d 700 (Ct. App. 1994).

This section includes the attempted crime, as well as the completed crime, and cannot be combined with the general attempt statute. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999).

The purposes of ss. 948.05, child exploitation, and 948.07. child enticement, are distinct, and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833.

This section creates one crime with multiple modes of commission. The alternate modes of commission are not so dissimilar as to implicate fundamental fairness. As such, a defendant is not entitled to a unanimity instruction. State v. DeRango. 2000 WI 89. 236 Wis. 2d 721. 613 N.W.2d 833.

This section delineates one crime with alternate modes of commission, one of which is attempt to cause a child to to go into a vehicle, building, room, or secluded place. The principles of attempt in s. 939.32 apply. That the intended victims were fictitious constituted an extraneous fact beyond the defendant's control that prevented successful enticement while not excusing the attempt to entice. State v. Koenck, 2001 WI App 93,242 Wis. 2d 693,626 N.W.2d 359.

Attempted child enticement may be charged when the intervening extraneous factor that makes the offense an attempted rather than completed crime is that unbeknownst to the defendant, the "victim" is an adult government agent posing as a child. The 1st amendment is not implicated by the application of the child enticement statute to child enticements initiated over the internet as the statute regulates conduct. not speech. State v. Robins. 2002 WI 65, 253 Wis. 2d 298. 647 N.W.2d 287.

948.075 Use of a computer to facilitate a child sex crime. (1) Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent [to] have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class D felony.

NOTE: Sob. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. **Prior to 2–1–03 it reads as shown below. The bracketed language indicates a necessary word that was omitted by Act 109. Corrective legislation is pending.**

(1) Whoever uses a computerized comniunication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent [to] have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class BC felony.

(2) This section does not apply if, at the time of the communication, the actor reasonably believed that the age of the person to whom the communication was sent was no more than 24 months less than the age of the actor.

(3) Proof that the actor did an act, other than use a computerized communication system to communicate with the individual, to effect the actor's intent under sub. (1) shall he necessary to prove that intent.

History: 2001 a. **109.**

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class D felony.

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

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class BC felony.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109.

948.09 Sexual intercourse with a child age 16 or older. Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class **A** misdemeanor.

History: 1987 a. 332.

948.095 Sexual assault of a student by a school instructional staff person. (1) In this section:

(a) 'School" means a public or private elementary or secondary school.

(b) "School staff' means any person who provides services to a school or a school board, including an employee of a school or

a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:

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

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class D felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

History: 1995 a. 456; 2001 a. 109.

948.10 Exposing genitals or pubic area. (1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class **A** misdemeanor.

(2) Subsection (1) does not apply under any of the following circumstances:

(a) The child is the defendant's spouse.

(b) A mother's breast–feeding of her child.

History: 1987 a. 332; 1989 a. 31; 1995 a. 165.

948.11 Exposing a child to harmful material or harmful descriptions or narrations. (1) DEFINITIONS. In this section:

(ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and

3. Lacks serious literary?artistic, political, scientific or educational value for children, when taken as a whole.

(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) CRIMINAL PENALTIES. (a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

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

(a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class E felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The pcrson has face–to–face contact with the child before or during the sale, rental, exhibit, playing, distribution; or loan.

(am) Any pcrson who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

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

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means. a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class E felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face–to–face contact with the child before or during the communication.

(b) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class **A** misdemeanor if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face–to–face contact with the child.

(c) It is an affirmative defense to a prosecution for a violation of pars. (a) 2., (am) 2., and (b) 2. if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. **A** defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

(3) EXTRADITION. If any person is convicted under sub. (2) and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

(4) LIBRARIES AND EDUCATIONAL INSTITUTIONS. (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources *to* be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. **A** public elementary or secondary school.

2. A private school, as defined in s. 115.001 (3r).

3. Any school offering vocational, technical or adult education that:

a. Is a technical college, is a school approved by the educational approval board under s. 45.54 or is a school described in s. 45.54 (1) (c) 6., 7. or 8.; and

b. Is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

4. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

5. A library that receives funding from any unit of government.

(5) SEVERABILITY. The provisions of this section, including the provisions of sub. (4), are severable, as provided in s. 990.001 (11).

History: 1987 a. 332; 1989 a. 31; 1993 a. 220,399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9; 2001 a. 16, 104, 109.

This section is not unconstitutionally overbroad. The exemption from prosecution of libraries, educational institutions. and their employees and directors does not violate equal protection rights. State v. Thiel, 183 Wis. 2d 505,515 N.W.2d 847 (1994).

The lack of a requirement in sub. (2) (a) that the defendant know the age of the child exposed to the harmful material does not render the statute unconstitutional on its face. State v. Kevin L.C. 216 Wis. 2d 166, 576 N.W.2d 62 (Ct. App. 1997).

An individual violates this section if he or she, aware of the nature of the material, knowingly offers or presents for inspection to a specific minor material defined as harmful to children in sub. (1) (b). The personal contact between the perpetrator and the child–victim is what allows the state to impose on the defendant the risk that the victim is a minor. State v. Trochinski, 2002 WI 56, 253 Wis. 2d 38, 644 N.W.2d 891.

948.12 Possession of child pornography. (1m) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class I felony:

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

(1m) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class E felony:

(a) The person knows that he or she possesses the material.

(b) The person knows the character and content of the sexually explicit conduct in the material.

(c) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, is guilty of a Class I felony:

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

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, is guilty of a Class E felony:

(a) The person knows that he or she has exhibited or played the recording.

(b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct.

(c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

History: 1987 a. 332; 1995 a. 67: 2001 a. 16, 109.

A violation of this section must be based on the content of the photograph and how it was produced. Evidence of the location and manner of storing the photo are not properly considered. State v. A. H. 211 Wis. 2d 561.566 N.W.2d 858 (Ct. App. 1997).

For purposes of multiplicity analysis each image possessed can be prosecuted separately. Prosecution is not based upon the medium of reproduction. Multiple punishment is appropriate for a defendant who compiled and stored multiple images over time. State v. Multaler, 2002 WI 35,252 Wis. 2d 54,643 N.W.2d 437.

948.13 Child sex offender working with children. (1) In this section, "serious child sex offense" means any of the following:

(a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under I8 years of age at the time of the offense, or a crime under s. 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.06, 948.07 (1), (2), (3), or (4), or 948.075.

NOTE: Par. (a) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) A crime under federal law or the law of any other state or, prior to May 7. 1996, under the law of this state that is comparable to a crime specified in par. (a).

(2) (a) Except as provided in pars. (b) and (c), whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her *to* work or interact primarily and directly with children under 16 years of age is guilty of a Class F felony.

(b) If all of the following apply, the prohibition under par. (a) does not **apply** to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77 (1) (b), of the prohibition under par. (a):

1. The only serious child sex offense for which the person has been convicted is a crime under s. 948.02 (2).

2. The person was convicted of the serious child sex offense before May 7,2002.

3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

(c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m).

NOTE: Sub. (2) is shown as affected eff. 2–1–03 by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c). Prior to 2–1–03 it reads:

(2) (a) Except as provided in pars. (b) and (c), whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class C felony.

(b) If all of the following apply, the prohibition under par. (a) does not apply to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77 (1) (b), of the prohibition under par. (a):

1. The only serious child sex offense for which the person has been convicted is a crime under s. 948.02 (2).

2. The person was convicted of the serious child sex offense before May 7, 2002.

3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

(c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m).

(2m) (a) A person who has been convicted of a crime under s. 948.02 (2) or 948.025 (1) may petition the court in which he or she was convicted to order that the person be exempt from sub. (2) (a) and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. The court may grant a petition filed under this paragraph if the court finds that all of the following apply:

1. At the time of the commission of the crime under s. 948.02 (2) or 948.025 (1) the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child with whom the person had sexual contact or sexual intercourse.

Im. The child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16.

2. It is not necessary, in the interest of public protection, to require the person to comply with sub. (2) (a).

(b) A person filing a petition under par. (a) shall send a copy of the petition to the district attorney who prosecuted the person. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's petition to inform the victim of his or her right to make or provide a statement under par. (d).

(c) A court may hold a hearing on a petition filed under par. (a) and the district attorney who prosecuted the person may appear at

the hearing. Any hearing that a court decides to hold under this paragraph shall be held no later than 30 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90-day period under sub. (2) (b).

(d) Before deciding a petition filed under par. (a), the court shall allow the victim of the crime that is the subject of the petition to make a statement in court at any hearing held on the petition or to submit a written statement to the court. A statement under this paragraph must be relevant to the issues specified in par. (a) 1., Im. and 2.

(e) 1. Before deciding a petition filed under par. (a), the court may request the person filing the petition to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's petition without prejudice.

2. If a person is cxamincd by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at a hearing held under par. (c). The report shall contain an opinion regarding whether it would be in the interest of public protection to require the person to comply with sub. (2) (a) and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(em) A court shall decide a petition no later than 45 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90-day period under sub. *(2)* (b).

(f) The person who filed the petition under par. (a) has the burden of proving hy clear and convincing evidence that he or she satisfies the criteria specified in par. (a) 1., 1m. and 2. In deciding whether the person has satisfied the criterion specified in par. (a) 2., the court may consider any of the following:

1. The ages, at the time of the violation, of the person who filed the petition and the victim of the crime that is the subject of the petition.

2. The relationship between the person who filed the petition and the victim of the crime that is the subject of the petition.

3. Whether the crime that is the subject of the petition resulted in bodily harm to the victim.

4. Whether the victim of the crime that is the subject of the petition 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.

5. The probability that the person who filed the petition will commit other serious child sex offenses in the future.

6. The report of the examination conducted under par. (e).

7. Any other factor that the court determines may be relevant to the particular case.

(3) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact primarily and directly with children under 16 years of age: teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation or school bus driving.

History: 1995 a. 265; 1997 a. 130, 220; 1999 a. 3; 2001 a. 97, 109; s. 13.93 (2) (c).

948.20 Abandonment of a child. Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class G felony.

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

948.20 Abandonment of a child. Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class D felony.

History: 1977 c. 173; 1987 a. 333 s. 35; Stats. 1987 s. 948.20; 3001 a. 109.

948.21 Neglecting a child. (1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class D felony.

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

(1) Any person who is responsible for a child's welfare who. through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class C felony.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

History: 1987 a. 332; 2001 a. 109.

948.22 Failure to support. (1) In this section:

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(b) "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90 (1) (a) 2. and (11).

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class I felony. A prosecutor may charge a person with multiple counts for a violation under this subsection if each count covers a period of at least 120 consecutive days and there is no overlap between periods.

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

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class E felony. A *prosecutor* may charge a person with *multiple counts* for a violation under this subsection if each count covers a period of at least 120 consecutive days and there is no overlap between periods.

(3) Any person who intentionally fails for less than 120 consecutive days to provide spousal. grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount established by rule by the department of workforce development under s. 49.22 (9) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01 *(2)*.

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

(6) Under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) Before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. If a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defcndant to pay the amount required including any amount necessary to meet a past legal obligation for support.

2. If no court order described under subd. 1. exists, enter such an order. For orders for child or spousal support, the court shall determine the amount of support in the manner required under s. 767.25 or 767.51, regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.25 (1)

(bm) Upon request, the court may modify the amount of child or spousal support payments determined under par. (b) 2. if, after considering the factors listed in s. 767.25 (Im), regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.25 (l), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to either of the child's parents.

(c) *An* order under par. (a) or (b), other than an order for grandchild support, constihites an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31,212; 1993 a. 274, 481; 1995 a. 259; 1997 a. 35, 191,252: 1999 a. 9; 2001 a. 109.

Under s. 940.27 (2) [now 948.22 (2)], the state must prove that the defendant had an obligation to provide support and failed to do so for 120 days; the state need not prove that the defendant was required to pay a specific amount. Sub. (6) does not unconstitutionally shift the burden of proof. State v. Duprey, 149 Wis. 2d 655,439 N.W.2d 837 (Ct. App. 1989).

Multiple prosecutions for a continuous failure to pay child support are allowed. State v. Grayson, 172 Wis. 2d 156,493 N.W.2d 23 (1992).

Jurisdiction in a criminal nonsupport action under s. 948.22 does not require that the child tu be supported be a resident of Wisconsin during the charged period. State v. Gantt, 201 Wis. 2d 206.548 N.W.2d 134 (Ct. App. 1996).

Evidence of incarceration to prove inability to pay is not excluded under sub. (6), and there was no basis to find the evidence irrelevant. State v. Stutesman, 221 Wis. 2d 178,555 N.W.2d 181 (Ct. App. 1998).

This section does not distinguish between support and arrearages. It criminalizes failure to pay arrearages even after the child for whom support is ordered attains majority. Incarceration for violation of this section is not unconstitutional imprisonment for a dcht. State v. Lenz. 230 Wis. 2d 529,602 N.W.2d 172 (Ct. App. 1999).

If nonsupport is charged as a continuing offense, the statute of limitations runs from the last date the defcndant intentionally fails to provide support. If charges are brought for each 120 day period that a person does not pay, the statute of limitations bars charging for those 120 periods that are more than 6 years old. The running of the statute of limitations does not prevent inclusion of all unpaid amounts in a later arrearage order. State v. Monarch, 230 Wis. 2d 542,602 N.W.2d 179 (Ct. App. 1999).

A father, who intentionally refused to pay child support could, as a condition of probation, be required to avoid having another child unless he showed that he could support that child and his current children. In light of the the defendant's ongoing victimization of his children and record manifesting his disregard for the law. the condition was not overly bmad and was reasonably related to the defendant's rehabilitation. State v. Oaklcy, 2001 WI 103,245 Wis. 2d 447,629 N.W.2d 200.

948.23 Concealing death of child. Any person who conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was bom dead or alive is guilty of a Class I felony.

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

948.23 Concealing death of child. Any person who conceals the corpse nf any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class E felony.

History: 1977 e. 173; 1987 a. 332 s. 47; Stats. 1987 s. 948.23; 2001 a. 109.

948.24 Unauthorized placement for adoption. Whoever does any of the following is guilty of a Class H felony:

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

(1) Whoever does any of the following is guilty of a Class D felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the legal and other services rendered in connection with the adoption and the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(2) This section does not apply to placements under s. 48.839.

History: 1981 c. 81; 1987 a. 332 s. 50; Stats. 1987 s. 948.24; 1989 a. 161; 1997 a. 104; 2001 a. 109.

948.30 Abduction of another's child; constructive custody. Any person who, for any unlawful purpose, does any of the following is guilty of a Class E felony:

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

(1) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

(a) Takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) Detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

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

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class B felony:

(a) By force or threat of imminent force, takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) By force or threat of imminent force, detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(3) For purposes of subs. (1) (a) and (2) (a), a child is in the custody of his or her parent, guardian or legal custodian if:

(a) The child is in the actual physical custody of the parent, guardian or legal custodian: or

(b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

History: 1987 **a.** 332: 2001 a. 109.

948.31 Interference with custody by parent or others.

(1) (a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.

2. The department of health and family services or the department of corrections or any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court–approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parcnt has committed a violation of this paragraph.

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

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court–approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class C felony. This paragraph is not applicable if the court has entered an order authorizing the persun to so take or withhold the child. The fact that joint legal custody has been awarded to both parents hy a court does not preclude a court from finding that one parent has cummitted a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under **s.** 767.60, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

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

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.60, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class E felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:

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

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the *following* is guilty of a Class C felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in **s.** 822.02 (9).

(c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period.

(4) (a) It is an affirmative dcfensc to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parcnt to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;

3. **Is** consented to by the other parent or any other person or agency having legal custody of the child; or

4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in **s.** 971.19 (8).

(6) In addition to any other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under **s.** 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested **party,** the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

History: 1987 **a.** 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. 7237,9126 (19); 1995 a. 77: 1997 **a.** 290; 2001 **a.** 109.

"Imminent physical harm" under sub. **(4)** is discussed. State v. McCoy, 143 Wis. 2d 274,421 N.W.2d 107 (1988).

When a mother had agreed to the father's taking their child on a camping trip, but the father **actually** intended to permanently take, **and** did abscond to Canada with, the child, the child was taken based on the mother's "mistake of fact," which under s. 939.22 (48) rendered the taking of the child "without consent." State v. Inglin, 224 Wis. 2d 764,592 N.W.2d 666 (Ct. App. 1999).

In sub. (2), "takes away" a child refers to the defendant removing the child from the parents' possession. which suggests physical manipulation or physical removal. "Causes to leave" in sub. (2) means being responsible for a child abandoning. departing, or leaving the parents, which suggest some sort **of** mental, rather than physical. manipulation. **State v.** Samuel, 2001 WI App 25,240 Wis. 2d 756,623 N.W.2d 565. Reversed on other grounds, 2002 WI **34.**

948.35 Solicitation of a child to commit a felony.

(1) (a) Except as provided in pars. (b) to (d) or **s.** 961.455, any person who has attained the age of 17 years and who, with the intent that a felony be committed and under circumstances that indicate unequivocally that he or she has the intent, knowingly solicits, advises, hires, directs or counsels a person 17 years of age or under to commit that felony may be fined or imprisoned or both, not to exceed the maximum penalty for the felony.

(b) For a solicitation to commit a Class **A** felony under the circumstances described undcr par. (a), the person may be imprisoned not to exceed the maximum period of imprisonment for a Class B felony.

(c) For a solicitation to commit a Class B felony under the circumstances described under par. (a), the person may be fined or imprisoned or both, not to exceed the maximum penalties for a Class C felony.

(d) For a solicitation to commit a Class C felony under the circumstances described under par. (a), the person may be fined or imprisoned or both, not to exceed the maximum penalties for a Class D felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. A defendant does not have a dcfcnse to a prosecution under this section because he or she mistakenly believed that the person who was solicited, advised, hired, directed or counseled had attained the age of 18 years, even if the mistaken belief was reasonable.

NOTE: This section is repealed eff. 2–1–03 by 2001 Wis. Act 109.

History: 1991 **a. 153;** *1995* **a.** 27,448; *2001* **a.** 109.

948.36 Use of child to commit a Class A felony. (1) Any person who has attained the age of 17 years and who, with the intent that a Class **A** felony be committed and under circumstances that indicate unequivocally that he or she has that intent, knowingly solicits, advises, hires, directs, counsels, employs, uses or otherwise procures a person 17 years of age or under to commit that Class **A** felony may, if the Class **A** felony is committed by the child, be imprisoned for not more than 5 years in excess of the maximum period of imprisonment provided by law for that Class **A** felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. **A** defendant does not have a defense to a prosecution under this section because he or she mistakenly believed that the person who **was** advised, hired, directed, counseled, employed, used or procured had attained the age of 18 years, even if the mistaken belief was reasonable.

NOTE: This section is repealed eff. 2–1–03 by 2001 Wis. Act 109.

History: 1991 a. 153; 1995 a. 27; 2001 a. 109.

948.40 Contributing to the delinquency of a child. (1) No person may intentionally encourage or contribute to the delinquency of a child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 10 which would be a delinquent act if committed by a child 10 years of age or older.

(2) No person responsible for the child's welfare may, by disregard of the welfare of the child, contribute to the delinquency of the child. This subsection includes disregard that contributes to an act by a child under the age of 10 that would be a delinquent act if committed by a child 10 years of age or older.

(3) Under this section, a person encourages or contributes to the delinquency of a child although the child does not actually become delinquent if the natural and probable consequences of the person's actions or failure to take action would he to cause the child to become delinquent.

(4) **A** person who violates this section is guilty of a Class **A** misdemeanor, except:

(a) If death is a consequence, the person is guilty of a Class D felony; or

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

(a) If death is a consequence, the person is guilty of a Class C felony: or

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class H felony.

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

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class D felony.

History: 1987 a. 332; 1989 a. 31; 1995 a. 77; 2001 a. 109.

948.45 Contributing to truancy. (1) Except as provided in sub. (2), any person 17 years of age or older who, by any act or omission, knowingly encourages or contributes to the truancy, as defined under s. 118.16(1) (c), of a person 17 years of age or under **is** guilty of a Class C misdemeanor.

(2) Subsection (1) does not apply to a person who has under his or her control a child who has been sanctioned under **s.** 49.26 (1) (h).

(3) An act or omission contributes to the truancy of a child, whether or not the child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant.

History: 1987 a. 285; 1989 a. 31 s. 2835m; Stats. 1989 s. 948.45; 1995 a. 77.

948.50 Strip search by school employee. (1) The legislature intends, by enacting this section, to protect pupils from being strip searched. By limiting the coverage of this section, the legislature is not condoning the use of strip searches under other circumstances.

(2) In this section:

(a) "School" means a public, parochial or private school which provides an educational program for one or more grades between kindergarten and grade 12 and which is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school or high school.

(b) "Ship search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(3) Any official, employee or agent of any school or school district who conducts a strip search of any pupil is guilty of a Class B misdemeanor.

(4) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a secured correctional facility, **as** defined in s. 938.02 (15m), or a secured child caring instihition, as defined in s. 938.02 (15g).

(c) Is committed, transferred or admitted under ch. 51, 971 or 975.

(5) This section does not apply to any law enforcement officer conducting a strip search under **s.** 968.255.

History: 1983 a. 489; 1987 a. 332 s. 38; Stats. 1987 s. 948.50; 1995 a. 77.

948.51 Hazing. (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.

(2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.

(3) Whoever violates sub. (2) is guilty of:

(a) **A** Class **A** misdemeanor if the act results in or is likely to result in bodily harm to another.

(b) **A** Class H felony if the act results in great bodily harm to another.

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

(b) A Class E felony if the act results in great bodily harm or death to another.

(c) **A** Class G felony if the act results in the death of another.

NOTE: Par. (c) is created eff. 2–1–03 by 2001 Wis. Act 109.

History: 1953 a. 356; 1987 a. 332 s. 32; Stats. 1987 s. 945.51; 2001 a. 109.

948.55 Leaving or storing a loaded firearm within the reach or easy access of a child. (1) In this section, "child" means a person who has not attained the age of 14 years.

(2) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class **A** misdemeanor if all of the following occur:

(a) **A** child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.

(3) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class C misdemeanor if all of the following occur:

(a) **A** child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) possesses or exhibits the firearm in a public place or in violation of **s.** 941.20.

(4) Subsections (2) and (3) do not apply under any of the following circumstances:

(a) The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.

(b) The fireami is securely locked with a trigger lock.

(c) The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.

(d) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during or incidental to the performance of the person's duties.

(e) The child obtains the fircann as a result of an illegal entry by any person.

(f) The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under **s.** 939.48.

(g) The person who stores or leaves a loaded fireann reasonably believes that a child is not likely to be present where the firearm is stored or left.

(h) The firearm is rendered inopcrablc by the removal of an essential component of the firing mechanism such as the bolt in a breech–loading firearm.

(5) Subsection (2) does not apply if the bodily harm or death rcsultcd from an accident that occurs while the child **is** using the firearm in accordance with **s.** 29.304 or 948.60 (3).

History: 1991 a. 139; 1997 a. 248.

948.60 Possession of a dangerous weapon by a person under 18. (1) In this section, "dangerous weapon" means any firearm; loaded or unloaded; any electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star–like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

(2) (a) Any person under 18 years of age who possesses or goes armed with a dangerous weapon is guilty of a Class A misdemeanor.

(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon to a pcrson under 18 years of age is guilty of a Class **I** felony.

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

(h) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon to a person under 18 years of age is guilty of a Class E felony.

(c) Whoever violates par. (b) is guilty of a Class H felony if the person under 18 years of age under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

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

(c) Whoever violates par. (b) is guilty of a Class D felony if the person under 18 years of age under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

(d) A person under 17 years of age who has violated this subsection is subject to the provisions of ch. 938 unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under **s.** 938.183.

(3) (a) This section docs not apply to a pcrson under 18 years of age who possesses or is armed with a dangerous weapon when the dangerous weapon is being used in target practice under the supervision of an adult or in a course of instruction in the traditional and proper use of the dangerous weapon under the supervision of an adult. This section does not apply to an adult who transfers a dangerous weapon to a person under I8 years of age for use only in target practice under the adult's supervision or in a course of instruction in the traditional and proper use of the dangerous weapon under the adult's supervision.

(b) This section does not apply to a person under 18 years of age who is a member of the anned forces or national guard and who possesses or is armed with a dangerous weapon in the line of duty. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a dangerous weapon to a person under 18 years of age in the line of duty.

(c) This section does not apply to a person under 18 years of age who possesses or is armed with a firearm having a barrel 12 inches in length or longer and who is in compliance with **ss.** 29.304 and 29.593. This section does not apply to an adult who transfers a firearm having a barrel 12 inches in length or longer to a person under 18 years of age who is in compliance with **ss.** 29.304 and 29.593.

History: 1987 a. 332; 1991 a. 18, 139: 1993 a. 98; 1995 **a. 27,** 77; 1997 a. 248; 2001 a. 109.

Sub. (2) (b) does not set a standard for civil liability, and violation of sub. (2) (b) does not constitute negligence per se. Logarto v. Gustafson, 998 F. **Supp.** 998 (1998).

948.605 Gun–free school zones. (1) DEFINITIONS. In this section:

(a) "Encascd" has the meaning given in **s.** 167.31 (1) (b).

(ac) "Fireann" does not include any beebee or pellet–firing gun that expels a projectile through the force of air pressure or any starter pistol.

(am) "Motor vehicle" has the meaning given in **s.** 340.01 (35).

(b) "School" has the meaning given in s. 948.61 (1) (b).

(c) "School zone" means any of the following:

1. In or on the grounds of a school.

2. Within 1,000 feet from the grounds of a school.

(2) POSSESSION OF FIREARM IN SCHOOL ZONE. (a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class I felony.

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

(a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class A misdemeanor.

(b) Paragraph (a) does not apply to the possession of a firearm:

1. On private property not part of school grounds;

2. If the individual possessing the firearm **is** licensed to do so by a political subdivision of the state or bureau of alcohol, tobacco and firearms in which political subdivision the school zone is located, and the law of the political subdivision requires that, before an individual may obtain such a license, the law enforcement authorities of the political subdivision must verify that the individual is qualified under law to receive the license;

3. That is not loaded and is:

a. Encased; or

b. In a locked firearms rack that is on a motor vehicle;

4. By an individual for use in a program approved by a school in the school zone;

5. By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

6. By a law enforcement officer acting in his or her official capacity; or

7. That is unloaded and is possessed by an individual while traversing school grounds for the purpose of gaining access to public or private lands open to hunting, if the entry on school grounds is authorized by school authorities.

(3) DISCHARGE OF FIREARM IN A SCHOOL ZONE. (a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at aplace the individual knows is a school zone is guilty of a Class G felony.

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

(a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place the individual knows is a school zone is guilty of a Class D felony.

(b) Paragraph (a) docs not apply to the discharge of, or the attempt to discharge, a firearm:

1. On private property not part of school grounds;

2. As part of a program approved by a school in the school zone, by an individual who is participating in the program;

3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

4. By a law enforcement officer acting in his or her official capacity.

(4) CONSECUTIVE SENTENCE. Notwithstanding **s.** 973.15 (2) to (4), if a court imposes a term of imprisonment under this section, the court shall impose the sentence consecutive to any other sentence.

NOTE: Sub. (4) is repealed eff. 2–1-03 by 2001 Wis. Act 109.

History: 1991 **a.** 17; 1993 a. 336; 2001 **a.** 109.

948.61 Dangerous weapons other than firearms on school premises. (1) In this section:

(a) "Dangerous weapon'' has the meaning specified in **s.** 939.22 (10), except "dangerous weapon" does not include any firearm and does include any beebee or pellet–firing gun that expels a projectile through the force of air pressure or any starter pistol.

(b) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(2) Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:

(a) **A** Class **A** misdemeanor.

(b) A Class I felony, if the violation is the person's 2nd or subsequent violation of this section within a 5–year period, as measured from the dates the violations occurred.

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

(b) A Class E felony, if the violation is the person's 2nd or subsequent violation of this section within a 5–year period, as measured from the dates the violations occurred.

(3) This section does not apply to any person who:

(a) Uses a weapon solely for school--sanctioned purposes.

(b) Engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties.

(c) Is a law enforcement officer acting in the discharge of his or her official duties.

(d) Participates in a convocation authorized by school authorities in which weapons of collectors or instructors are handled or displayed.

(e) Drives a motor vehicle in which a dangerous weapon is located onto school premises for school–sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

(4) **A** person under 17 years of age who has violated this section is subject to the provisions of ch. 938, unless jurisdiction is waived under **s.** 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

History: 1987 **a.** 332; 1991 a. 17; 1993 a. 336; 1995 a. 27, 77; 2001 **a.** 109.

Pellet **guns** and BB **guns** are dangerous weapons under **this** section. **Interest** of Michelle A.D. 181 Wis. 2d 917, 512 N.W.2d 245 **(Ct.** App. 1994).

948.62 Receiving stolen property from a child. (1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) **A** Class **A** misdemeanor, if the value of the property does not exceed $500.

(b) A Class I felony, if the value of the property exceeds $500 but docs not exceed $2,500.

(bm) A Class H felony, if the value of the property exceeds $2,500 but docs not exceed $5,000.

(c) **A** Class G felony, if the value of the property exceeds $5,000.

NOTE: Sub. (1) is shown as affected eff. 2–1-03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) A Class E felony, if the value of the property does not exceed $500.

(b) A Class D felony, if the value of the property exceeds $500 but does not exceed $2,500.

(c) A Class C felony, if the value of the property exceeds $2,500.

(2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:

(a) That the value of the property received from the child exceeds $500.

(b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

History: 1987 **a.** 332; 2001 **a.** 109.

948.63 Receiving property from a child. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) **As** a dealer in secondhand articles or jewelry or junk, purchases any personal property, except old rags and waste paper, from any child, without the written consent of his or her parent or guardian: or

(2) **As** a pawnbroker or other person who loans money and takes personal property as security therefor, receives personal property as security for a loan from any child without the written consent of his or her parent or guardian.

History: 1971 c. 228; 1977 **c.** 173; 1987 **a.** 332 **s.** 40; **Stats.** 1987 **s. 948.63;** 1989 a. 257.

948.70 Tattooing of children. (1) In this section:

(a) "Physician" has the meaning given in **s.** 448.01 (5).

(b) "Tattoo" means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

(2) Subject to sub. (3), any person who tattoos or offers to tattoo a child is subject to a Class D forfeiture.

(3) Subsection (2) does not prohibit a physician from tattooing or offering to tattoo a child in the course of his or her professional practice.

History: 1991 **a. 106.**

CHAPTER 971
CRIMINAL PROCEDURE — PROCEEDINGS BEFORE AND AT TRIAL

971.14 Competency proceedings.
971.17 Commitment of persons found not guilty by reason of mental disease or mental defect

971.14 Competency proceedings. (1) PROCEEDINGS. (a) The court shall proceed under this section whenever there is reason to doubt a defendant's competency to proceed.

(b) If reason to doubt competency arises after the defendant has been bound over for trial after a preliminary examination, or after a finding of guilty has been rendered by the jury or made by the court, a probable cause determination shall not be required and the court shall proceed under sub.(2).

(c) Except as provided in par.(b), the court shall not proceed under sub.(2) until it has found that it is probable that the defendant committed the offense charged. The finding may be based upon the complaint or, if the defendant submits an affidavit alleging with particularity that the averments of the complaint are materially false, upon the complaint and the evidence presented at a hearing ordered by the court. The defendant may call and cross–examine witnesses at a hearing under this paragraph but the court shall limit the issues and witnesses to those required for determining probable cause. Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of the bearing by telephone or live audiovisual means. If the court finds that any charge lacks probable cause, it shall dismiss the charge without prejudice and release the defendant except as provided in s. 971.31 (6).

(2) EXAMINATION. (a) The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant. If an inpatient examination is determined by the court to be necessary, the defendant may be committed to a suitable mental health facility for the examination period specified in par.(c), which shall be deemed days spent in custody under s. 973.155. If the examination is to be conducted by the department of health and family services, the court shall order the individual to the facility designated by the department of health and family services.

(am) Notwithstanding par.(a), if the court orders the defendant to be examined by the department or a department facility, the department shall determine where the examination will be conducted, who will conduct the examination and whether the examination will be conducted on an inpatient or outpatient basis. Any such outpatient examination shall be conducted in a jail or a locked unit of a facility. In any case under this paragraph in which the department determines that an inpatient examination is necessary, the 15–day period under par.(c) begins upon the arrival of the defendant at the inpatient facility. If an outpatient examination is begun by or through the department, and the department later determines that an inpatient examination is necessary, the sheriff shall transport the defendant to the inpatient facility designated by the department, unless the defendant has been released on bail.

(b) If the defendant has been released on bail, the court may not order an involuntary inpatient examination unless the defendant fails to cooperate in the examination or the examiner informs the court that inpatient observation is necessary for an adequate examination.

(c) Inpatient examinations shall be completed and the report of examination filed within 15 days after the examination is ordered or as specified in par.(am), whichever is applicable, unless, for good cause, the facility or examiner appointed by the court cannot complete the examination within this period and requests an extension. In that case, the court may allow one 15–day extension of the examination period. Outpatient examinations shall be completed and the report of examination filed within 30 days after the examination is ordered.

(d) If the court orders that the examination be conducted on an inpatient basis, the sheriff of the county in which the court is located shall transport any defendant not free on bail to the examining facility within a reasonable time after the examination is ordered and shall transport the defendant to the jail within a reasonable time after the sheriff and county department of community programs of the county in which the court is located receive notice from the examining facility that the examination has been completed.

(e) The examiner shall personally observe and examine the defendant and shall have access to his or her past or present treatment records, as defined under s. 51.30 (1) (b).

(f) A defendant ordered to undergo examination under this section may receive voluntary treatment appropriate to his or her medical needs. The defendant may refuse medication and treatment except in a situation where the medication or treatment is necessary to prevent physical harm to the defendant or others.

(g) The defendant may be examined for competency purposes at any stage of the competency proceedings by physicians or other experts chosen by the defendant or by the district attorney, who shall be permitted reasonable access to the defendant for purposes of the examination.

(3) REPORT. The examiner shall submit to the court a written report which shall include all of the following: (a) A description of the nature of the examination and an identification of the persons interviewed, the specific records reviewed and any tests administered to the defendant.

(b) The clinical findings of the examiner.

(c) The examiner's opinion regarding the defendant's present mental capacity to understand the proceedings and assist in his or her defense.

(d) If the examiner reports that the defendant lacks competency, the examiner's opinion regarding the likelihood that the defendant, if provided treatment, may be restored to competency within the time period permitted under sub.(5) (a).

(dm) If sufficient information is available to the examiner to reach an opinion, the examiner's opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment. The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

1. The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

2. The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(e) The facts and reasoning, in reasonable detail, upon which the findings and opinions under pars.(b) to (dm) are based.

(4) HEARING. (a) The court shall cause copies of the report to be delivered forthwith to the district attorney and the defense counsel, or the defendant personally if not represented by counsel. The report shall not be otherwise disclosed prior to the hearing under this subsection.

(b) If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall promptly determine the defendant's competency and, if at issue, competency to refuse medication or treatment for the defendant's mental condition on the basis of the report filed under sub.(3) or (5). In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of the hearing by telephone or live audiovisual means. At the commencement of the hearing, the judge shall ask the defendant whether he or she claims to be competent or incompetent. If the defendant stands mute or claims to be incompetent, the defendant shall be found incompetent unless the state proves by the greater weight of the credible evidence that the defendant is competent. If the defendant claims to be competent, the defendant shall be found competent

unless the state proves by evidence that is clear and convincing that the defendant is incompetent. If the defendant is found incompetent and if the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in sub.(3) (dm), the court shall make a determination without a jury and issue an order that the defendant is not competent to refuse medication or treatment for the defendant's mental condition and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

(c) If the court determines that the defendant is competent, the criminal proceeding shall be resumed.

(d) If the court determines that the defendant is not competent and not likely to become competent within the time period provided in sub.(5) (a), the proceedings shall be suspended and the defendant released, except as provided in sub.(6) (b).

(5) COMMITMENT. (a) If the court determines that the defendant is not competent but is likely to become competent within the period specified in this paragraph if provided with appropriate treatment, the court shall suspend the proceedings and commit the defendant to the custody of the department of health and family services for placement in an appropriate institution for a period of time not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. Days spent in commitment under this paragraph are considered days spent in custodyunder s. 973.155.

(am) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the treatment facility determines that the defendant should be subject to such a court order, the treatment facility may file with the court with notice to the counsel for the defendant, the defendant and the district attorney, a motion for a hearing, under the standard specified in sub.(3) (dm), on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall, under the procedures and standards specified in sub.(4) (b), determine the defendant's competency to refuse medication or treatment for the defendant's mental condition. At the request of the defendant, the defendant's counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph.

(b) The defendant shall be periodically reexamined by the treatment facility. Written reports of examination shall be furnished to the court 3 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment. Each report shall indicate either that the defendant has become competent, that the defendant remains incompetent but that attainment of competency is likely within the remaining commitment period, or that the defendant has not made such progress that attainment of competency is likely within the remaining commitment period. Any report indicating such a lack of sufficient progress shall include the examiner's opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm because of aging or other like incapacities.

(c) Upon receiving a report under par.(b), the court shall proceed under sub.(4). If the court determines that the defendant has become competent, the defendant shall be discharged from commitment and the criminal proceeding shall be resumed. If the court determines that the defendant is making sufficient progress toward becoming competent, the commitment shall continue.

(d) If the defendant is receiving medication the court may make appropriate orders for the continued administration of the medication in order to maintain the competence of the defendant for the duration of the proceedings. If a defendant who has been restored to competency thereafter again becomes incompetent, the maximum commitment period under par.(a) shall be 18 months minus the days spent in previous commitments under this subsection, or 12 months, whichever is less.

(6) DISCHARGE; CIVIL PROCEEDINGS. (a) If the court determines that it is unlikely that the defendant will become competent within the remaining commitment period, it shall discharge the defendant from the commitment and release him or her, except as provided in par.(b). The court may order the defendant to appear in court at specified intervals for re-determination of his or her competency to proceed.

(b) When the court discharges a defendant from commitment under par.(a), it may order that the defendant be taken immediately into custody by a law enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an approved public treatment facility under s. 51.45 (2) (c) or an appropriate medical or protective placement facility. Thereafter, detention of the defendant shall be governed by s. 51.15, 51.45 (11) or 55.06 (11), as appropriate. The district attorney or corporation counsel may prepare a statement meeting the requirements of s. 51.15 (4) or (5), 51.45 (13) (a) or 55.06 (11) based on the allegations of the criminal complaint and the evidence in the case. This statement shall be given to the director of the facility to which the defendant is delivered and filed with the branch of circuit court assigned to exercise criminal jurisdiction in the county in which the criminal charges are pending where it shall suffice, without corroboration by other petitioners, as a petition for commitment under s. 51.20, 51.45 (13) or 55.06 (2). This section does not restrict the power of the branch of circuit court in which the petition is filed to transfer the matter to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the county. Days spent in commitment or protective placement pursuant to a petition under this paragraph shall not be deemed days spent in custody under s. 973.155.

(c) If a person is committed under s. 51.20 pursuant to a petition under par.(b), the county department under s. 51.42 or 51.437 to whose care and custody the person is committed shall notify the court which discharged the person under par.(a), the district attorney for the county in which that court is located and the person's attorney of record in the prior criminal proceeding at least 14 days prior to transferring or discharging the defendant from an inpatient treatment facility and at least 14 days prior to the expiration of the order of commitment or any subsequent consecutive order, unless the county department or the department of health and family services has applied for an extension.

(d) Counsel who have received notice under par.(c) or who otherwise obtain information that a defendant discharged under par.(a) may have become competent may move the court to order that the defendant undergo a competency examination under sub.(2). If the court so orders, a report shall be filed under sub.(3) and a hearing held under sub.(4). If the court determines that the defendant is competent, the criminal proceeding shall be resumed. If the court determines that the defendant is not competent, it shall release him or her but may impose such reasonable nonmonetary conditions as will protect the public and enable the court and district attorney to discover whether the person subsequently becomes competent.

History: 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 85,403; 1989 a. 31, 107; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1995 a. 27 s. 9126 (19); 1995 a. 268; 1997 a. 252; 2001 a. 16.

Judicial Council Committee's **Note, 1981:**

Sub.(1) (a) does not require the court ***to*** honor every request for an examination. The intent of sub.(1) (a) is to avoid unnecessary examinations by clarifying the threshold for a competency inquiry in accordance with State v. McKnight, 65 Wis. 2d 583 (1974).

"Reason to doubt" may be raised by a motion setting forth the grounds for belief that a defendant lacks competency, by the evidence presented in the proceedings or by the defendant's colloquies with the judge or courtroom demeanor. In some cases an evidentiary hearing may he appropriate to assist the court in deciding whether to order an examination under sub.(2). Even when neither party moves the court to order a competency inquiry, the court may be required by due process to so inquire where the evidence raises a sufficient doubt. Pate v. Robinson, 383 U.S. 375, 387 (1966); Drope v. Missouri, 420 U.S. 162 (1975).

The Wisconsin supreme court has held that a defendant may not be ordered to undergo a competency inquiry unless the court has found probable cause to believe he or she **is** guilty of the offense charged. State v. McCredden, 33 Wis. 2d 661 (1967).

Where this requirement has not been satisfied through a preliminary examination or verdict or finding of guilt prior to the time the competency issue is raised, a special probable cause determination is required. Subsection (1) (b) **allows** that determination to he made from the allegations in the criminal complaint without an evidentiary hearing unless the defendant submits a particularized affidavit alleging that averments in the criminal complaint are materially false. Where **a** hearing is held, the issue is limited to probable cause and hearsay evidence may be admitted. See s. 911.01 **(4)** (c). Sub.(2) (a) requires the court to appoint one or more qualified examiners to examine the defendant when there is reason to doubt his or her competency. Although the prior statute required the appointment of a physician, this section allows the court to appoint examiners without medical degrees, if their particular qualifications enable them to form expert opinions regarding the defendant's competency. Sub.(2) (b), (c)

and (d) is intended to limit the defendant's stay at the examining facility to that period necessary for examination purposes. In many cases, it is possible for an adequate examination to be made without institutional commitment, expediting the commencement of treatment of the incompetent defendant. Fosdal, The Contributions and Limitations of Psychiatric Testimony, 50 Wis. Bar Bulletin, No. 4, pp. 31–33 (April 1977).

Sub.(2) (ef clarifies the examiner's right of access to the defendant's past or present treatment records, otherwise confidential under s. 51.30. Sub.(2) (f) clarifies that a defendant on exandnation status may receive voluntary treatment hut, until committed under sub.(5), may not be involuntarily treated or medicated unless necessary for the safety of the defendant or others. See s. 51.61 (1) (f), (g), (h) and (i). Sub.(2) (g), like prior s. 971.14 (7), permits examination of the defendant by an expert of his or her choosing. It also allows access to the defendant by examiners selected by the prosecution at any stage of the competency proceedings. Sub.(3) requires the examiner to render an opinion regarding the probability of timely restoration to competency, to assist the court in determining whether an incompetent defendant should be committed for treatment. Incompetency commitments may not exceed the reasonable time necessary to determine whether there is a substantial probability that the defendant will attain competency in the foreseeable future: Jackson v. Indiana, 406 U.S. 715,738 (1972).

The new statute also requires the report to include the facts and reasoning which underlie the examiner's clinical findings and opinion on competency. Sub.(4) is based upon priors. 971.14 (4).

The revision emphasizes that the determination of competency is a judicial matter. State ex rel. Haskins v. Dodge County Court, 62 Wis. 2d 250 (1974).

The standard of proof specified in State ex rel. Matalik v. Schubert, 57 Wis. 2d 315 (1973) has been changed to conform to the "clear and convincing evidence" standard of s. 51.20 (13) (e) and Addington v. Texas, 441 US. 418 (1979). [but see 1987 Wis. Act 85]

Sub.(5) requires, in accordance with Jackson v. Indiana, 406 US. 715 (1972), that competency commitments he justified by the defendant's continued progress toward becoming competent within a reasonable time. The maximum commitment period is established at 18 months, in accordance with State ex rel. Haskins v. Dodge County Court, 62 Wis. 2d 250 (1974) and other data.

If a defendant becomes competent while committed for treatment and later becomes incompetent, further commitment is permitted but in no event may the cumulated comnutment periods exceed 24 months or the maximum sentence for the offense with which the defendant is charged, whichever is less. State ex rel. Deisinger v. Treffert, 85 Wis. 2d 257 (1978).

Sub.(6) clarifies the procedures for transition to civil commitment, alcoholism treatment or protective placement when the competency commitment has not been, or is not likely to be, successful in restoring the defendant to competency. The new statute requires the defense counsel, district attorney and criminal court to he notified when the defendant is discharged from civil commitment, in order that a redetermination of competency may be ordered at that stage. State ex rel. Porter v. Wolke, 80 Wis. 2d 197,297 N.W. 2d 881 (1977).

The procedures specified in sub.(6) are not intended to be the exclusive means of initiating civil comnutment proceedings against such persons. See, e.g., In Matter of Haskins, 101 Wis. 2d 176 (Ct App. 1980). [Bill 765–A]

Judicial Council **Note, 1990:** [Re amendment of (1) (c)]

The McCredden hearing is substantially similar in purpose to the preliminary examination. The standard for admission of telephone testimony should be the same in either proceeding. [Re amendment of (4) (b)] The standard for admission of telephone testimony at a competency hearing is the same as that for a preliminary examination. Sees. 970.03 (13) and NOTE thereto. [Re Order eff. 1–1–91]

The legislature intended by the reference to s. 973.155 in sub.(5) (a) that good time credit be accorded persons committed as incompetent to stand trial. State v. Moore, 167 Wis. 2d 491,481 N.W.2d 633 (1992).

A competency hearing may he waived by defense counsel without affirmative assent of the defendant. State v. Guck, 176 Wis. 2d 845,500 N.W.2d 910 (1993).

The state bears the burden of proving competency when put at issue by the defendant. A defendant shall not he subject to a criminal trial when the state fails to prove competence by the greater weight of the credible evidence. A trial court's competency determination should be reversed only when clearly erroneous. State v. Garfoot, 207 Wis. 2d 215, 558 N.W.2d 626 (1997).

See also State v. Byrge, 2000 WI 101,237 Wis. 2d 197,614 N.W.2d 477.

A probationer has a right to a competency determination when, during a revocation proceeding, the administrative law judge has reason to doubt the probationer's competence. The determination shall he made by the circuit court in the county of sentencing, which shall adhere to ss. 971.13 and 971.14 to the extent practicable. State ex rel. Vanderheke v. Endicott, 210 N.W.2d 503,563 N.W.2d 883 (1997).

When a competency examination was ordered, hut never occurred, the time limits under sub.(2) did not begin to run and no violation occurred. State ex rel. Hager v. Marten, 226 Wis. 2d 687,594 N.W.2d 791 (1999).

Wisconsin's new competency to stand trial statute. Fosdal and Fullin. WBB Oct. 1982. The insanity defense: Ready for reform? Fullin. WBB Dec. 1982.

971.17 Commitment of persons found not guilty by reason of mental disease or mental defect.

(1) COMMITMENT PERIOD. When a defendant is found not guilty by reason of mental disease or mental defect, the court shall commit the person to the department of health and family services for a specified period not exceeding two–thirds of the maximum term of imprisonment that could be imposed under s. 973.15 (2) (a) against an offender convicted of the same crime or crimes, including imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (Ib), 940.25 (Ib) and 961.48 and other penalty enhancement statutes, as applicable, subject to the credit provisions of s. 973.155. If the maximum term of imprisonment is life, the commitment period specified by the court may be life, subject to termination under sub.(5).

(1g) If the defendant under sub.(1) is found not guilty of a felony by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.29.

(1h) NOTICE OF RESTRICTIONS ON POSSESSION OF BODY ARMOR. If the defendant under sub.(1) is found not guilty of a violent felony, as defined in s. 941.291 (1) (b), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.291.

(1j) SEXUAL ASSAULT; LIFETIME SUPERVISION. (a) In this subsection, "serious sex offense" has the meaning given in s. 939.615 (1) (b).

(b) If a person is found not guilty by reason of mental disease or defect of a serious sex offense, the court may, in addition to committing the person to the department of health and family services under sub.(1), place the person on lifetime supervision under s. 939.615 if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(1m) SEXUAL ASSAULT; REGISTRATION AND TESTING. (a) If the defendant under sub.(1) is found not guilty by reason of mental disease or defect for a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) Im. Except as provided in subd. 2m., if the defendant under sub.(1) is found not guilty by reason of mental disease or defect for any violation, or for the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the defendant 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 defendant report under s. 301.45. 2m. If the defendant under sub.(1) is found not guilty by reason of mental disease or defect for a violation, or for the solicitation, conspiracy or attempt 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, 948.08, 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 defendant was not the victim's parent, the court shall require the defendant to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the defendant, that the defendant is not required to comply under s. 301.45 (1m).

3. In determining under subd. Im. whether it would be in the interest of public protection to have the defendant report under s. 301.45, the court may consider any of the following:

a. The ages, at the time of the violation, of the defendant and the victim of the violation.

b. The relationship between the defendant 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 defendant 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 defendant to comply with the reporting requirements under s. 301.45, the court may order the defendant to continue to comply with the reporting requirements until his or her death.

5. If the court orders a defendant 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 of not guilty by reason of mental disease or defect 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.

(2) INVESTIGATION AND EXAMINATION. (a) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment of not guilty by reason of mental disease or mental defect is entered. If the court lacks sufficient information to make the determination

required by sub. (3) immediately after trial, it may adjoum the hearing and order the department of health and family services to conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination or both, to assist the court in framing the commitment order.

(b) If a supplementary mental examination is ordered under par.(a), the court may appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the person. In lieu thereof, the court may commit the person to an appropriate mental health facility for the period specified in par.(c), which shall count as days spent in custody under s. 973.155.

(c) An examiner shall complete an inpatient examination under par.(b) and file the report within 15 days after the examination is ordered unless, for good cause, the examiner cannot complete the examination and requests an extension. In that case, the court may allow one 15–day extension of the examination period. An examiner shall complete an outpatient examination and file the report of examination within **15** days after the examination is ordered.

(d) If the court orders an inpatient examination under par.(b), it shall arrange for the transportation of the person to the examining facility within a reasonable time after the examination is ordered and for the person to be returned to the jail or court within a reasonable time after the examination has been completed.

(e) The examiner appointed under par.(b) shall personally observe and examine the person. The examiner or facility shall have access to the person's past or present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If the examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(f) The costs of an examination ordered under par.(a) shall be paid by the county upon the order of the court as part of the costs of the action.

(g) Within 10 days after the examiner's report is filed under par.(c), the court shall hold a hearing to determine whether commitment shall take the form of institutional care or conditional release.

(3) COMMITMENT ORDER. (a) An order for commitment under this section shall specify either institutional care or conditional release. The court shall order institutional care if it finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage. If the court does not make this finding, it shall order conditional release. In determining whether commitment shall be for institutional care or conditional release, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(b) If the state proves by clear and convincing evidence that the person is not competent to refuse medication or treatment for the person's mental condition, under the standard specified in **s.** 971.16 (3), the court shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(c) If the court order specifies institutional care, the department of health and family services shall place the person in an institution under s. 51.37 (3) that the department considers appropriate in light of the rehabilitative services required by the person and the protection of public safety. If the person is not subject to a court order determining the person to be not competent to refuse medication or treatment for the person's mental condition and if the institution in which the person is placed determines that the person should be subject to such a court order, the institution may file with the court, with notice to the person and his or her counsel and the district attorney, a motion for a hearing, under the standard specified in s. 971.16 (3), on whether the person is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the person needs medication or treatment and that the person is not competent to refuse medication or treatment, based on an examination of the person by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall determine the person's competency to refuse medication or treatment for the person's mental condition. At the request of the person, his or her counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph. If the district attorney, the person and his or her counsel waive their respective opportunities to present other evidence on the issue, the court shall determine the person's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. If the state proves by evidence that is clear and convincing that the person is not competent to refuse medication or treatment, under the standard specified in s. 971.16 (3), the court shall order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(d) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health and family services. The department of health and family services and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health and family services may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and family services and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department of health and family services may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the individual will be living in that county.

(e) An order for conditional release places the person in the custody and control of the department of health and family services. A conditionally released person is subject to the conditions set by the court and to the rules of the department of health and family services. Before a person is conditionally released by the court under this subsection, the court shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the court a written statement waiving the right to be notified. If the department of health and family services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The department of health and family services shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department of health and family services may detain the person in a jail or in a hospital, center or facility specified by **s.** 51.15 (2). The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or

that the safety of the person or others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution under s. 51.37 (3) until the expiration of the commitment or until again conditionally released under this section.

(4) PETITION FOR CONDITIONAL RELEASE. (a) Any person who is committed for institutional care may petition the committing court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this paragraph on the person's behalf at any time.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney and, subject to sub.(7) (b), refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney.

(c) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(d) The court, without a jury, shall hear the petition within 30 days after the report of the court–appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18). The court shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(e) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health and family services. The department of health and family services and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health and family services may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and family services and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department of health and family services may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the individual will be living in that county.

(4m) NOTICE ABOUT CONDITIONAL RELEASE. (a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1).

2. "Member of the family" means spouse, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court conditionally releases a defendant under this section, the district attorney shall do all of the following in accordance with par.(c):

1. Make a reasonable attempt to notify the victim of the crime committed by the defendant 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.

2. Notify the department of corrections.

(c) The notice under par.(b) shall inform the department of corrections and the person under par.(b) 1. of the defendant's name and conditional release date. The district attorney shall send the notice, postmarked no later than 7 days after the court orders the conditional release under this section, to the department of corrections and to the last–known address of the person under par.(b) 1.

(d) Upon request, the department of health and family services shall assist district attorneys in obtaining information regarding persons specified in par.(b) 1.

(5) PETITION FOR TERMINATION. A person on conditional release, or the department of health and family services on his or her behalf, may petition the committing court to terminate the order of commitment. If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney and, subject to sub.(7) (b), refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney. The petition shall be determined as promptly as practicable by the court without a jury. The court shall terminate the order of commitment unless it finds by clear and convincing evidence that further supervision is necessary to prevent a significant risk of bodily harm to the person or to others or of serious property damage. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and current mental condition, the person's behavior while on conditional release, and plans for the person's living arrangements, support, treatment and other required services after termination of the commitment order. A petition under this subsection may not be filed unless at least 6 months have elapsed since the person was last placed on conditional release or since the most recent petition under this subsection was denied.

(6) EXPIRATION OF COMMITMENT ORDER. (a) At least 60 days prior to the expiration of a commitment order under sub.(1), the department of health and family services shall notify all of the following:

1. The court that committed the person.

2. The district attorney of the county in which the commitment order was entered.

3. The appropriate county department under s. 51.42 or 51.437.

(b) Upon the expiration of a commitment order under sub.(1), the court shall discharge the person, subject to the right of the department of health and family services or the appropriate county department under s. 51.42 or 51.437 to proceed against the person under ch. 51 or 55. If none of those departments proceeds against the person under ch. 51 or 55, the court may order the proceeding.

(6m) NOTICE ABOUT TERMINATION OR DISCHARGE. (a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1).

2. "Member of the family" means spouse, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court orders that the defendant's commitment is terminated under sub.(5) or that the defendant be discharged under sub.(6), the department of health and family services shalt do all of the following in accordance with par.(c):

1. If the person has submitted a card under par.(d) requesting notification, make a reasonable attempt to notify the victim of the crime committed by the defendant, 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.

2. Notify the department of corrections.

(c) The notice under par.(b) shall inform the department of corrections and the person under par.(b) 1. of the defendant's

name and termination or discharge date. The department of health and family services shall send the notice, postmarked at least 7 days before the defendant's termination or discharge date, to the department of corrections and to the last–known address of the person under par.(b) 1.

(d) The department of health and family services shall design and prepare cards for persons specified in par.(b) 1. to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the applicable defendant 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.(b) 1. 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), except as needed to comply with a request under sub.(4m) (d) or **s.** 301.46 (3) (d).

(7) HEARINGS AND RIGHTS. (a) The committing court shall conduct all hearings under this section. The person shall be given reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(b) Without limitation by enumeration, at any hearing under this section, the person has the right to:

1. Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under **s.** 977.07 (1).

2. Remain silent.

3. Present and cross-examine witnesses.

4. Have the hearing recorded by a court reporter.

(c) If the person wishes to be examined by a physician, as defined in **s.** 971.16 (1) (a), or a psychologist, as defined in s. 971.16 (1) (b), or other expert of his or her choice, the procedure under **s.** 971.16 (4) shall apply. Upon motion of an indigent person, the court shall appoint a qualified and available examiner for the person at public expense. Examiners for the person or the district attorney shall have reasonable access to the person for purposes of examination, and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c).

(d) Upon a showing by the proponent of good cause under **s.** 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

(8) APPLICABILITY. This section governs the commitment, release and discharge of persons adjudicated not guilty by reason of mental disease or mental defect for offenses committed on or after January 1, 1991. The commitment, release and discharge of persons adjudicated not guilty by reason of mental disease or mental defect for offenses committed prior to January 1, 1991, shall be governed by s. 971.17, 1987 stats., as affected by 1989 Wisconsin Act 31.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order. 158 Wis. 2d xvii (1990); 1991 a. 39. 189.269; 1993 a. 16. 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 **a.** 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95.

Cross reference: See also ch. HFS 98, Wis. adm. code.

Judicial Council Note, 1990: Sub.(7) (d) [created] conforms the standard for admission of testimony by telephone or live audio–visual means at hearings under this section to that governing other evidentiary criminal proceedings. [Re Order **eff.** 1–1–91] Neither sub.(3), the due process clause, or the equal protection clause provide a right to a jury trial in recommitment proceedings. State v. M.S. 159 Wis. 2d 206,464 N.W.2d 41 (Ct. App. 1990).

The state, and not the county, is responsible for funding the conditions for a person conditionally released under this section. Rolo v. Goers, 174 Wis. 2d 709, 497 N.W.2d 724 (Ct. App. 1993).

It is not a denial of due process for an insanity acquitee to be confined to a state health facility for so long as he or she is considered dangerous, although sane, provided that: 1) the commitment does not exceed the maximum term of imprisonment that could have been imposed for the criminal offense charged; and 2) the state bears the burden of proof that the commitment should continue because the individual is a danger to himself, herself, or others. State v. Randall, 192 Wis. 2d 800, 532 N.W.2d 94 (1995).

The sentence of a defendant convicted **of** committing **a** crime while committed due to a prior not guilty by reason of mental disease or defect commitment under s. 971.17 may not he served concurrent with the commitment. State v. Szulczewski, 209 Wis. 2d 1,561 N.W.2d 781 (Ct. App. 1997).

A court may not order a prison sentence consecutive to an s. 971.17 commitment A sentence can only **be** imposed concurrent or consecutive to another sentence. State v. Harr, 211 Wis. 2d 584, 568 N.W.2d 307 (Ct. App. 1997).

A commitment under this section is legal cause under s. 973.15 (8) to stay the sentence of a defendant who commits a crime while serving the commitment. Whether to stay the sentence while the commitment is in effect or to begin the sentence immediately is within the sentencing court's discretion. State v. Szulczewski, 216 Wis. 2d 494,574 N.W.2d 660 (1998).

Sub.(3) (c) is unconstitutional to the extent that it allows administration of psychotropic medication to an inmate based on a finding of incompetence to refuse without there being a finding that the inmate is dangerous to himself or others. Enis. v. DHSS, 962 F. Supp. 1192 (1997).

973.055 Domestic abuse assessments. (1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse assessment of $50 for each offense if:

(a) 1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.285, 940.30, 940.305, 940.31, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125 or of a municipal ordinance conforming to s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125; and

2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child; or

(b) The court convicts a person under s. 813.12 (8) (a) or a conforming municipal ordinance.

(2) (a) If the assessment is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(b) If the assessment is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the state treasurer as provided in s. 66.0114 (1) (bm).

(3) All moneys collected from domestic abuse assessments shall be deposited by the state treasurer in s. 20.435 (3) (hh) and utilized in accordance with s. 46.95.

(4) A court may waive part or all of the domestic abuse assessment under this section if it determines that the imposition of the full assessment would have a negative impact on the offender's family.

History: 1979 c. 111; 1979 c. 221 s. 2202 (20); 1979 c. 355; 1981 c. 20 s. 2202 (20) (s); 1983 a. 27 s. 2202 (20); 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 262, 319; 1995 a. 27,201,343,353; 1997 a. 27, 35, 143; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16.

CHAPTER 975
SEX CRIMES LAW

975.001 Definition.
975.01 End of commitments; declaration of policy.
975.06 Commitment to the department.
975.07 The effect of appeal from a judgment of conviction.
975.08 Notice of commitments; treatment, transfer, use of other facilities.
975.09 Periodic examination.
975.10 Parole.
975.11 Duration of control.
975.12 Termination of control.
975.15 Review by court of orders of the department
975.16 Appeal from judgment of committing court.
975.17 Option for re-sentencing.
975.18 Establishment of regulations.

Cross-reference: **See** definitions in s. 967.02.

975.001 Definition. In this chapter, "department" means the department of health and family services.

History: 1989 a. 31; 1995 a. 27 s. 9126 (19).

975.01 End of commitments; declaration of policy.

(1) No person may be committed under this chapter after July 1, 1980.

(2) The legislature finds and declares that persons violating s. 940.225, 948.02, 948.025 or 948.06 or committing crimes when motivated by a desire for sexual excitement may be in need of specialized treatment. The legislature intends that the department should provide treatment for those persons.

History: 1975 c. 184 s. 13; 1975 c. 421; 1979 c. 117; 1987 a. 332 s. 64; 1993 a. 227.

The trial court had no authority to vacate a sex crimes act commitment for the purpose of sentencing the offender under the criminal code. State v. Machner, 101 Wis. 2d 79, 303 N.W.2d 633 (1981).

Repeal of the Wisconsin sex crimes act. 1980 WLR 941.

975.06 Commitment to the department. (1) (a) If the department recommends specialized treatment for the defendant's mental or physical aberrations, the court shall order a hearing on the issue of the need for specialized treatment unless such hearing is expressly waived by the defendant. The hearing shall be conducted by the court or as provided in par. (b). The court may consider any department rule established in accordance with ch. 227 establishing criteria for recommending specialized treatment. The defendant shall be afforded the opportunity to appear with counsel; process to compel the attendance of witnesses and the production of evidence; and a physician, or clinical psychologist of defendant's choosing to examine the defendant and testify in defendant's behalf. If unable to provide counsel or expert witness, the court shall appoint such to represent or examine the defendant.

(b) The hearing shall be to a jury, unless the defendant waives a jury. The number of jurors shall be determined under s. 756.06 (2) (b). The procedure shall be substantially like a jury trial in a civil action. The judge may instruct the jurors in the law. No verdict is valid or received unless agreed to and signed by five-sixths of the jurors. At the time of ordering a jury to be summoned, the court shall fix the date of hearing, which date shall be not less than 30 days nor more than 40 days after the demand for the jury was made. The court shall submit to the jury the following form of verdict:

STATE OF WISCONSIN

.... County

Members of the Jury:

Do you find from the evidence that the defendant .... (Insert name) .... is in need of specialized treatment? Answer "Yes" or "NO".

(2) If, upon completion of the hearing as required in sub. (1), it is found that the defendant is in need of specialized treatment the court shall commit the defendant to the department. The court may stay execution of the commitment and place the defendant on probation under ch. 973 with a condition of probation that the defendant receive treatment in a manner to be prescribed by the court. If the defendant is not placed on probation, the court shall order the defendant conveyed by the proper county authorities, at county expense, to the sex crimes law facility designated by the department.

(3) Probation under sub. (2) shall be construed as a commitment to the department for the purposes of continuation of control as provided in this chapter.

(4) If, upon the completion of the hearing required in sub. (1), it is found that the defendant is not in need of such specialized treatment the court shall sentence the defendant as provided in ch. 973.

(5) If records of the department are required for any hearing under this chapter, they shall be made available upon a subpoena directed to the coordinator of the special review board of the department, who may respond in person or designate an agent to produce the records of the department.

(6) Persons committed under this section who are also encumbered with other sentences, whether concurrent with or consecutive to the commitment, may be placed by the department in any of the facilities listed in s. 975.08 (2) or (3) (a). Such facilities may be regarded as state prisons for the purpose of beginning the other sentences, crediting time served on them, and computing parole eligibility dates.

(7) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the facility to which the defendant is conveyed under sub. (2) determines that the defendant should be subject to such a court order, the facility may file with the court with notice to the counsel for the defendant, the defendant and the district attorney, a motion for a hearing, under the standard specified in s. 51.61 (1) (g) 4., on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this subsection, the court without a jury shall determine the defendant's competency to refuse medication or treatment. At the request of the defendant, the defendant's counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this subsection. If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall determine without a jury the defendant's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon consent of all parties and approval by the court for good cause shown, testimony may be received into the record of the hearing by telephone or live audiovisual means. If the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in s. 51.61 (1) (g) 4., the court shall make a determination and issue as part of the defendant's commitment order an order that the defendant is not competent to refuse medication or treatment and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

History: 1973 c. 44; 1975 c. 155, 199, 200; 1977 c. 318; 1977 c. 447 s. 210; 1981 c. 20; 1989 a. 31; 1995 a. 268; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 85.

Legislative Council **Note, 1975:** This bill inserts provisions for a jury trial in the procedures to commit (s. 975.06) and recommit (s. 975.14) convicted defendants for special treatment under the Sex Crimes Law. In State ex rel. Farrell v. Stovall (1973), 59 Wis. 2d 148, the Wisconsin Supreme Court ruled, on equal protection grounds, that hearings on commitment and recommitment under the Sex Crimes Law must give the defendant the same rights as a proceeding under Ch. 51 (commitment for mental illness); i.e., a hearing on the issue to a jury. This bill provides for a 12-person jury, but allows the defendant to request a 6-person jury or waive a jury. It also requires that jury verdicts favoring special treatment must be agreed to by five-sixths of the jurors. The five-sixths requirement is drawn from ch. 51, and is also the standard for civil actions (see s. 270.25 [805.09 (2)]). [Bill 259-A]

A commitment to the department does not constitute cruel and unusual punishment. Howland v. State, 51 Wis. 2d 162, 186 N.W.2d 319.

The defendant is entitled to a jury determination **on** the question of his sexual deviancy at his initial commitment and any recommitment under s. 975.14. The procedure is substantially like a jury trial in a civil action. Some distinctions as to judicial review and release are still permitted. State ex rel. Farrell v. Stovall, 59 Wis. 2d 148,207 N.W.2d 809.

A defendant, convicted of rape, committed while out on bail awaiting a new trial on a prior rape charge, who was placed on probation and ordered to receive outpatient treatment as a sex deviate upon the department's recommendation, did not, after retrial and conviction of tlie **first** offense and change in the department's report, establish trial court abuse **of** discretion in committing him to the department. Cousins v. State, 62 Wis. 2d 217, 214 N.W.2d 315.

A court may impose a criminal sentence consecutive to a sex crimes commitment. State v. Kruse, 101 Wis. 2d 387.305 N.W.2d 85 (1981).

975.07 The effect of appeal from a judgment of conviction. (1) The right of a defendant to appeal from the judgment of conviction is not affected by this chapter.

(2) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in sub. (3).

(3) If the committing court is of the opinion that the appeal was taken in good faith and that the question raised merits review by the appellate court, or when there has been filed with the court a certificate that a judge of an appellate court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of the judge's incapacity to act, the judge by whom the certificate was filed, may direct that such person be released on bond under such conditions as, in the judge's opinion, will insure the person's submission to the control of the department at the proper time if it is determined on the appeal that the department is entitled to custody.

History: 1993 a. 486.

975.08 Notice of commitments; treatment, transfer, use of other facilities. (1) If a court commits a person to the department under s. 975.06 it shall at once notify the department of such action in writing.

(2) The department shall then arrange for the person's treatment in the institution best suited in its judgment to care for him or her. It may transfer him or her to or from any institution, including any correctional institution listed under s. 302.01, to provide for his or her needs and to protect the public. The department may irrespective of the person's consent require him or her to participate in vocational, physical, educational and correctional training and activities; may require such modes of life and conduct as seem best adapted to fit him or her for retum to full liberty without danger to the public; and may make use of other methods of treatment and any treatment conducive to the correction of the person and to the prevention of future violations of law by him or her.

(3) (a) The department may make use of law enforcement, detention, parole, medical, psychiatric, psychological, educational, correctional, segregative and other resources, institutions and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment, in existing institutions, of persons subject to the control of the department under this chapter.

(b) Nothing contained in par. (a) gives the department any of the following:

1. Control over existing institutions or agencies not already under its control.

2. Power to make use of any private agency or institution without that agency's or institution's consent.

(4) Placement of a person by the department in any institution or agency, not operated by the department, or the person's discharge by such institution or agency, shall not terminate the control of the department over the person. No person placed in such institution or agency may be released therefrom except to the department or after approval of such release by the department.

History: 1981 c. 20; 1989 a. 31; 1993 a. 486; 1999 a. 85.

975.09 Periodic examination. (1) The department shall make periodic examinations of all persons within its control under s. 975.06 for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination does not entitle the person to a discharge from the control of the department, but does entitle the person to petition the committing court for an order of discharge, and the court shall discharge the person unless it appears in accordance with sub. (3) that there is necessity for further control.

(2) If the person petitions the court for discharge under sub. (1), the person may appear in court with counsel and compel the attendance of witnesses and the production of evidence. The person may have a physician or clinical psychologist of the person's choosing examine the person and the medical records in the institution to which confined or at some suitable place designated by the department. If unable to provide counsel, the court shall appoint counsel to represent the person. Section 975.06 (1) governs the procedure of the hearing.

(3) If, after a hearing, it is found that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, the court shall dismiss the petition. If it is found that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that the person be discharged from the control of the department.

History: 1979 c. 117.

Minimum due process requirements for reexamination of a sex crimes commitment between the initial commitment and expiration **of** the maximum time is discussed. State ex rel. Terry v. Percy, 95 Wis. 2d 476,290 N.W.2d 713 (1980).

At hearing under sub. (3), the state's burden of proof is to establish the need for control by a preponderance of the evidence. State v. Hanson, 100 Wis. 2d 549, 302 N.W.2d 452 (1981).

Reexamination of **sex** crimes commitment is discussed. State **v.** Higginbotham, 110 Wis. 2d 393,329 N.W.2d 250 (Ct. App. 1982).

975.10 Parole. (1) Any person committed as provided in this chapter may be paroled if it appears to the satisfaction of the department of health and family services after recommendation by a special review board, appointed by the department, a majority of whose members shall not be connected with the department, that the person is capable of making an acceptable adjustment in society. Before a person is released on parole under this section, 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. Probation, extended supervision and parole agents of the department of corrections shall supervise persons paroled under this section.

(2) If a parolee under sub. (1) violates the conditions of parole, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the parolee, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking parole. Upon request of either party, the administrator of the division shall review the order. If the parolee waives the final administrative hearing, the secretary of health and family services shall enter an order either revoking or not revoking parole.

History: 1981 c. 266; 1989 a. 31, 107; 1995 a. 27 s. 9126 (19); 1997 a. 283.

The special review board has no power to recommend forfeiture of good time of a prisoner. State ex rel. Farrell v. Schubert, 52 Wis. 2d 351, 190 N.W.2d 529.

The special review board. Schmidt, 1973 WLR 172.

975.11 Duration of control. The department shall keep every person committed to it under s. 975.06 under its control and shall retain the person, subject to the limitations of s. 975.12 under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon as in its opinion there is reasonable probability that the person can be given full liberty without danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of the person's commitment.

History: 1993 a. 486.

975.12 Termination of control. (1) Every person committed to the department under this chapter who has not been discharged as provided in this chapter shall be discharged at the expiration of one year or the expiration of the maximum term prescribed by the law for the offense for which he or she was committed subject to sub. (2) and the credit provisions of s. 973.155, whichever period of time is greater, unless the department has petitioned for civil commitment of the person under s. 51.20. For the purpose of this subsection, sentence shall begin at noon of the day of the commitment by the court to the department.

(2) All commitments under s. 975.06 for offenses committed after July 1, 1970, shall be subject to ss. 302.11 and 302.12. If the department is of the opinion that release on parole under s. 53.11 (7) (a), 1981 stats., would be dangerous to the public, it shall petition for civil commitment under s. 51.20.

(3) Every person subject to the extended control of the department under ss. 975.13 to 975.15, 1977 stats., shall be discharged 5 years from the date of the commencement of extended control unless previously discharged under s. 975.15. If the department is of the opinion that release of a person from extended control would be dangerous to the public, it shall petition for civil commitment under s. 51.20.

History: 1977 c. 353; 1979 c. 117; 1983 a. 528 s. 28; 1989 a. 31.

Equal protection requires that a sex offender he credited with pre-conviction detention time in order to accelerate the date of expiration of the maximum term under s. 975.12. Milewski v. State, 74 Wis. 2d 681, 248 N.W.2d 70.

A ch. 980 commitment is not an extension of a commitment under ch. 975, and ch. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

975.15 Review by court of orders of the department. During any period of extended control, but not more often than semiannually, a person may apply to the committing court for a reexamination of his or her mental condition and the court shall fix a time for hearing the matter. The proceeding shall be as provided in s. 51.20(16), except as otherwise provided in this section.

History: 1975 c. 430 s. 80; 1977 c. 428 s. 115; 1979 c. 117.

975.16 Appeal from judgment of committing court. (1) If, under this chapter the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken as provided by law for appeals to said court from the judgment of an inferior court.

(2) At the hearing of an appeal the appellate court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the department refers the matter back for the taking of additional evidence.

(3) The appellate court may confirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged.

(4) Pending appeal the appellant shall remain under the control of the department.

975.17 Option for re-sentencing. A person who has been committed under ch. 975, 1977 stats., or the department, may petition the committing court for re-sentencing. A court shall act upon any petition received, and re-sentencing shall be in accordance with ch. 973. The person shall be given credit for time served pursuant to the commitment under this chapter.

History: 1979 c. 117; 1981 c. 20.

975.18 Establishment of regulations. The department may promulgate rules concerning parole, revocation of parole, supervision of parolees, and any other matters necessary for the administration of this chapter.

CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

980.01 Definitions.
980.015 Notice to the department of justice and district attorney.
980.02 Sexually violent person petition; contents; filing.
980.03 Rights of persons subject to petition.
980.04 Detention; probable cause hearing; transfer for examination.
980.05 Trial.
980.06 Commitment.
980.063 Deoxyribonucleic acid analysis requirements.
980.065 Institutional care for sexually violent persons.
980.067 Activities off grounds.
980.07 Periodic reexamination; report.
980.05 Petition for supervised release.
980.09 Petition for discharge; procedure.
980.10 Additional discharge petitions.
980.101 Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect.
980.105 Determination of county of residence.
980.11 Notice concerning supervised release or discharge.
980.12 Department duties; costs.
980.13 Applicability.

980.01 Definitions. In this chapter:

(1) "Department" means the department of health and family services.

(2) "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(4) "Secretary" means the secretary of health and family services.

(4m) "Serious child sex offender" means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2) or 948.025 (1) against a child who had not attained the age of 13 years.

(5) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification.

(6) "Sexually violent offense" means any of the following:

(a) Any crime specified in s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.

(b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(c) Any solicitation, conspiracy or attempt to commit a crime under par. (a) or (b).

(7) "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19): 1997 a. 281.295.

Chapter 980 creates a civil commitment procedure primarily intended *to* provide treatment and protect the public. not to punish the offender. **As** such the chapter does not provide for "punishment" in violation of the constitutional prohibitions against double jeopardy or ex post facto laws. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995).

Chapter 980 does not violate substantive due process guarantees. The definitions of "mental disorder" and "dangerous" are not overbroad. The treatment obligations under ch. 980 arc consistent with the nalure and duration of commitments under the chapter and the lack of a precommitment finding of treatability is not offensive to due process requirements. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

Chapter 950 does not violate equal protection guarantees. The state's compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

A child enticement conviction under a statute that had been repealed and recreated under a new statute number was a sexually violent offense under sub. (6) although the former number was not listed therein. State v. Irish, 210 Wis. 2d 107, 565 N.W.2d 161 (Ct. App. 1997).

Under sub. (7), a "mental disorder that makes it substantially probable that the person will engage in acts of sexual violence" **is** a disorder that predisposes the affected person to sexual violence. **A** person diagnosed with "antisocial personality disorder" coupled with another disorder may be found to be sexually violent. State v. Adams, 223 Wis. 2d 60. 588 N.W.2d 336 (Ct. App. 1998).

Definitions in ch. 980 serve a legal, and not medical, function. The court will not adopt a definition of pedophilia for ch. 980 purposes. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

That the state's expert's opined that pedophilia **is** a lifelong disorder did not mean that commitment was based solely on prior bad acts rather than a present condition. Jury instructions are discussed. State v. Matek, 223 Wis. 2d 611, 589 N.W.2d 441 (Ct. App. 1998).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999).

The definition **of** "sexually violent person" includes conduct prohibited by a previous version of a statute enumerated in **sub.** (6) as long as the conduct prohibited under the predecessor statute remains prohibited under the current statute. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The Kansas Sexually Violent Predator Act comports with due process requirements, does not **run** afoul **of** double Jeopardy principles, and is not an *ex post facto* law. Kansas v. Hendricks, 521 U.S. 346, 138 L. Ed. 2d 501 (1997).

The constitutionality of Wisconsin's Sexual Predator Law. Straub & Kachelski. Wis. Law. July, 1995.

980.015 Notice to the department of justice and district attorney. (1) In this section, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

(a) The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

(b) The anticipated release from a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined **in** s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), of a person adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s. 971. 17.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The person's name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(4) Any agency or officer. employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section.

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283; 1999 a. 9.

The "appropriate district attorney'' under sub. (2) is the district attorney in the county of conviction or the county to which prison officials propose to release the person. In re Commitment **of** Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996).

980.02 Sexually violent person petition; contents; filing. (1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(a) The department of justice at the request of the agency with jurisdiction, as defined in s. 980.015 (1), over the person. If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

(b) If the department ofjustice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(ag) The person is within 90 days of discharge or release, on parole, extended supervision or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), or from a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in any of the following:

(a) The circuit court for the county in which the pcrson was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for 'DaneCounty.

History: 1993 a. 47Y; 1995 a. 77. 225; 1997 a. 27, 205, 283; 1999 a. Y.

A ch. 980 commitment is not **an** extension of a commitment under ch. 975, and s. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279,541 N.W.2d 115 (1995).

For purposes of determining the proper time to file a ch. 980 petition under sub. (2) (ag), a sentence imposed for a sexually violent offense includes a sentence imposed consecutively to any sentence for a sexually violent offense. State v. Keith. 216 Wis. 2d 61, 573 N.W.2d 888 (Ct. App. 1997).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the tenn unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389.597 N.W.2d 697 (1999).

In deciding whether there is a substantial probability that the subject will commit future acts of sexual violence, the trier of fact is free to weigh expert testimony that conflicts and decide which **is** more reliable, to accept or reject an expert's testimony, including accepting only parts of the testimony, and to consider all non-expert testimony. State v. Kienitz, 227 Wis. 2d 423, 597 N.W.2d 712 (1999).

To the extent that **s.** 938.35 (1) prohibits the admission of delinquency adjudications inch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688,605 N.W.2d 598 (Ct. App. 1999)

In a trial on a petition filed under sub. (2), the state has the burden to prove beyond a reasonable doubt that the petition was filed within 90 days of the subject's release or discharge based on a sexually violent offense. State v. Thiel, 2000 WI 67,735 Wis. 2d 823,612 N.W.2d 94. See also State v. Thiel, 2001 WI App 52,241 Wis. 2d 439, 625 N.W.2d 321.

While a commitment under ch. 980 is civil. a court does not lose subject matter jurisdiction because a petition is filed under a criminal case number. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The mandatory release date is not excluded in determining whether under sub. (2) (ag) a petition is filed within "90 days of discharge or release." State v. Pharm, 2000 WI App 167,238 Wis. 2d 97, 617 N.W.2d 163.

The time limit in sub. (2) (ag) is mandatory. There is no authority for the state to hold a person beyond the discharge date of a criminal sentence in order to file a ch. 980 petition. State v. Thomas, 2000 WI App 162,238 Wis. 2d 216,617 N.W.2d 230.

Although sub. (2) (ag) refers to the current juvenile code, ch. 938, and makes no reference to the 1993–94 juvenile code. ch. 48, the circuit court **has** authority to proceed under ch. 980 against a person adjudicated delinquent under the former ch. 48. State v. Gibbs, 2001 WI App 83, 242 Wis.2d 640,625 N.W. 2d 666.

Keith is inapplicable to juveniles. The concept of consecutive sentences is foreign in the context of juvenile adjudications and dispositions. It was proper under sub. (2) (ag) to file a ch. 980 petition two days prior to the defendant's discharge from the sexual offense disposition although the defendant was subject to another adjudication that did not expire. State v. Wolfe, 2001 WI App 136,246 **Wis.** 2d 233, **631** N.W.2d 240.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 **WI** App 136,246 Wis. 2d 233. 631 N.W.2d 240.

When a ch. 980 petition was filed within 90 days of release from a sentence for **an** offense that was not a sexually violent offense, which was being served concurrently with a shorter sentence imposed for a sexually violent offense, the petition was timely. State v. Treadway, 2002 WI App 195,___Wis. 2d. ___, 651 N.W.2d 334.

980.03 Rights of persons subject to petition. (1) The circuit court in which a petition under s. 980.02 is filed shall conduct all hearings under this chapter. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(2) Except as provided in ss. 980.09 (2) (a) and 980.10 and without limitation by enumeration, at any hearing under this chapter, the pcrson who is the subject of the petition has the right to:

(a) Counsel. If the person claims or appears to be indigent, the court shall refer the pcrson to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

(b) Remain silent.

(c) Present and cross examine witnesses.

(d) Have the hearing recorded by a court reporter.

(3) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under s. 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under s. 980.05. Notwithstanding s. 980.05 (2), if the pcrson, the person's attorney, the department ofjustice or the district attorney does not request a jury trial, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury under this chapter is not valid unless it is unanimous.

(4) Whenever a person who is the subject of a petition filed under s. 980.02 or who has been committed under s. 980.06 is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of an expert or professional person appointed by a court under this subsection to perform an examination and participate in the trial or other proceeding on behalf of an indigent person. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

(5) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

History: 1993 a. 479; 1997 a. 252; 1999 a. 9.

Then: are circumstances when comment on the defendant's silence is pennitted. If a defendant refuses to be interviewed by the state's psychologist and the defense attorney challenges the psychologist's findings based on the lack of an interview, it is appropriate for the psychologist to testify about the refusal. State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998).

If all jurors agree that the defendant suffers from a mental disease. unanimity requirements are met, even if the jurors disagree on which disease predisposes the defendant to reoffend. State v. Pletz, 2000 WI App 221,239 Wis. 2d 49,619 N.W.2d 97.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable lo the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136,246 Wis. 2d 233, 631 N.W.2d 240.

980.04 Detention; probable cause hearing; transfer for examination. (1) Upon the filing of a petition under s. 980.02, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under s. 980.05 (5). A person detained under this subsection shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or is committed to institutional care, and the court orders detention under this subsection, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this subsection remains in effect until the person is discharged after a trial under s. 980.05 or until the effective date of a commitment order under s. 980.06, whichever is applicable.

(2) Whcncvcr a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(3) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. ***(3)***.

(5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

History: 1993 a. 479; 1995 a. 77; 1999 a. 9.

Cross Reference: See also ch. HFS 99, Wis. adm. code.

The rules ofcvidence apply to probable cause hearings under ch. 980. The exceptions to the rules for preliminary examinations also apply. Although s. 907.03 allows an expert to base an opinion on hearsay, an expert's opinion based solely on hearsay cannot constitute probable cause. State v. Watson, 227 Wis. 2d 167,595 N.W.2d 403 (1999).

In sub. (2), "in custody" means in custody pursuant to ch. 980 and does not apply to custody under a previously imposed sentence. State v. Brissette, 230 Wis. 2d X2. 601 N.W.2d 678 (Ct. App. 1999).

Chapter 980 provides its own procedures for commencing actions, and, as such. chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136,246 Wis. 2d 233, 631 N.W.2d 240.

The 72–hour time limit in sub. ***(2)*** is directory rather than mandatory. However, the individual's due process rights prevent the state from indefinitely delaying the probable cause hearing when the subject of the petition is in custody awaiting the hearing and has made a request for judicial substitution. State v. Beyer, 2001 WI App 184,247 Wis. 2d 1.632 N.W.2d 872.

Sub. (3) is not a rule regarding the admissibility of expert testimony. It provides the procedure for determining probable cause to believe a person is a sexually violent offender. The general rule for determining the qualification of an expert applies. State v. Sprosty, 2001 WI App 231.248 Wis. 2d 480, 636 N.W.2d 213.

980.05 Trial. (1) A trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person shall commence no later than 45 days after the date of the probable cause hearing under s. 980.04. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(1m) At the trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

(2) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04. If no request is made, the trial shall be to the court. The person, the person's attorney or the district attorney or department of justice, whichever is applicable, may withdraw his, her or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

(3) (a) At a trial on a petition under this chapter, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(b) If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in s. 980.01 (6) (b), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(4) Evidence that the person who is the subject of a petition under s. 980.02 was convicted for or committed sexually violent offenses before committing the offense or act on which the peti-

tion is based is not sufficient to establish beyond a rcasonablc doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under **s.** 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

History: 1993 a. 479; 1999 a. 9.

Sub. (1m) extends the rule protecting prearrest silence under the right against self–incrimination to *the* refusal of a commitment subject to participate in a formal evaluation prior to the filing of the commitment petition. State v. Zanelli, 212 **Wis.** 2d 358, 569 N.W.2d 301(Ct. App. 1997).

Sub. (1m) does not require a sworn petition. There is no constitutional right to a sworn complain! in a criminal case. State v. Zanelli, 212 Wis. 2d 358.569 N.W.2d 301 (Ct. App. 1997).

This section does not confine expert testimony to any specific standard nor mandate the type or character of relevant evidence that the state may choose to meet its burden of proof. State v. Zanelli. 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

The standard of review for commitments under ch. 980 is the standard applicable to the review of criminal cases—whether the evidence could have led the trier of fact to find beyond a reasonable doubt that the person subject to commitment is a sexually violent person. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d (1999).

Sub. (1m) provides a respondent with a statutory right to bc competent at trial. The procedure to effect that right should adhere to ss. 971.13 and 971.14. State v. Smith, 229 Wis. 2d 720. 600 N.W.2d 258 (Ct. App. 1999).

The right to a jury trial under ch. 980 is governed by sub. (2) rather than case law governing the right to a jury trial in criminal proceedings. State v. Bemstein. 231 Wis. 2d 392,605 N.W.2d 555 (1999).

The suh. (2) requirement that the 2 persons who did not request the withdrawal of a request for a jury trial consent to the withdrawal does not require a personal statement from the person subject to the commitment proceeding. Consent may be granted by defense counsel. State v. Bernstein. 231 Wis. 2d 392, 605 N.W.2d 555 *(1999).*

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications inch. 980 proceedings. it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688,605 N.W.2d 598 (Ct. App. 1999)

Sub. (2) does not require that a respondent be advised by the court that a jury verdict must be unanimous in order for the withdrawal of a request for a jury trial to be valid. State v. Denman, 2001 WI App 96, 243 Wis. 2d 14, 626 N.W.2d 296.

Chapter 980 respondents are afforded *the* same constitutional protections as criminal defendant.. Although the doctrine of issue preclusion may generally apply in ch. 980 cases, application of the doctrine may be fundamentally unfair. When new evidence of victim recantation was offered at the ch. 980 trail, the defendant had a due process interest in gaining admission of the evidence to ensure accurate expert opinions on his mental disorder and future dangerousness when the experts' opinions presented were based heavily on the fact that the defendants committed the underlying crime. State v. Sorenson, 2002 WI 78,254 Wis. 2d 54, 646 N.W.2d 354.

A sexually violent person committed under ch. 980 preserves the right to appeal, as a matter of right, by filing postverdict motions within 20 days of the commitment order. State v. Treadway, 2002 WI App 195, ___ Wis. 2d. ___, 651 N.W.2d 334.

A parole and probation agent who had been employed full–time in a specialized sex–offender unit for 3 years during which he had supervised hundreds of sex offenders was prepared by both training and experience to assess a sex offender, and was qualified to render an opinion on whether he would reoffend. That the agent did not provide the nexus to any mental disorder did not render his testimony inadmissible. State v. Treadway, 2002 WI App 195, ___ Wis. 2d. ___, 651 N.W.2d 334.

980.06 Commitment. If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. **A** commitment order under this section shall specify that the person be placed in institutional care.

History: 1993 a. 479; 1995 a. 276: 1997 a. 27,215,284; 1999 a. 9.

In the event that there is a failure to develop an appropriate treatment program, the remedy is to obtain appropriate treatment and not supervised release. State v. Seibert, 220 Wis. 2d 308.582 N.W.2d 745 (Ct. App. 1998).

Chapter 980 and s. 51.61 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed pursuant to ch. 980. State v. Anthony D.B. 2000 WI 94,237 Wis. 2d 1. 614 N.W.2d 435.

The incremental infringement by **s.** 980.06 on the liberty interests **of** those who have a sexually violent. predatory past and are currently suffering from a mental disorder that **makes** them dangerous sexual predators does not violate constitutional guarantees of due process. State v. Ransdell, 2001 WI App 202,247 Wis. 2d 613,634 N.W.2d 871.

Although ch. 51 is more "lenient" with those who are subject to its provisions than **is** ch. 980, the significant differences between the degree of danger posed by each of the **two** classes of persons subject to commitment under the two chapters, as well as the differences in what must be proven in order to commit under each, does not result in a violation of equal protection. State v. Williams, 2001 WI App 263,249 Wis. 2d 1, 637 N.W.2d 791.

Chapter 980, as amended, is not a punitive criminal statute. Because whether a statute is punitive is a threshold question for both double jeopardy and ex post facto analysis, neither of those clauses is violated by ch. 980. State v. Rachel. 2002 WI 81, 254 Wis. 2d 215,646 N.W.2d 375.

The mere limitation of a committed person's access to supervised release does not impose a restraint to the point that it violates due process. As amended, ch. 980 serves the legitimate and compelling state interests of providing treatment to the dangerously mentally ill and protecting the public from the dangerously mentally ill. The statute and is narrowly tailored to meet those interest. and, as such. it does not violate substantive due process. State v. Rachel. 2002 WI 81,254 Wis. 2d 215,646 N.W.2d 375.

Commitment under ch. 980 does not require a separate factual finding that an individual's mental disorder involves serious difficulty for the person in controlling his or her behavior. Proof that the person's mental disorder predisposes the individual to engage in acts of sexual violence and establishes a substantial probability that the person will again commit those acts necessarily and implicitly includes proof that the person's mental disorder involves serious difficulty in controlling his or her behavior. State v. Laxton. 2002 WI 82,254 Wis. 2d 185, 647 N.W.2d 784.

980.063 Deoxyribonucleic acid analysis requirements. (1) (a) **If** a person is found to be a sexually violent person under this chapter, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under **s.** 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. **165.77** (3).

(2) The department of justice shall promulgate rules providing for procedures for defendants to provide specimens under sub. (1) and for the transportation of those specimens to the state crime laboratories for analysis under s. 165.77.

History: 1995 a. 440.

980.065 Institutional care for sexually violent persons. (1m) The department shall place a person committed under **s.** 980.06 at the secure mental health facility established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

(1r) Notwithstanding sub. (1m), the department may place a female person committed under **s.** 980.06 at Mendota Mental Health Institute, Winnebago Mental Health Institute, or a privately operated residential facility under contract with the department of health and family services.

(2) The department may contract with the department of corrections for the provision of a secure mental health unit or facility for persons committed under s. 980.06. The department shall operate a secure mental health unit or facility provided by the department of corrections under this subsection and shall promulgate rules governing the custody and discipline of persons placed by the department in the secure mental health unit or facility provided by the department of corrections under this subsection.

History: 1993 a. 479; **1997** a. 27; 1999 a. 9; 2001 a. **16.**

980.067 Activities off grounds. The superintendent of the facility at which a person is placed under s. 980.065 may allow the person to leave the grounds of the facility under escort. The department of health and family services shall promulgate rules for the administration of this section.

History: 2001 a. 16.

980.07 Periodic reexamination; report. (1) If a person has been committed under **s.** 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental condition within 6 months after an initial commitment under **s.** 980.06 and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. At the time of a reexamination under this section, the person who has been Committed may retain or seek to have the court appoint an examiner as provided under s. 980.03 (4).

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the court that committed the pcrson under s. 980.06.

(3) Notwithstanding sub. (1), the court that committed a person under s. 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

History: 1993 a. 179; 1999 a. 9.

The 6-month period under sub. (1) for the 1st reexamination does not begin to run until the court conducts the dispositional hearing and issues an initial commitment order under s. 980.06 (2). State v. Marberry, 231 Wis. 2d 581, 605 N.W.2d 512 (Ct. App. 1999).

As part of an annual review, an involuntary medication order must be reviewed following the same procedure used to obtain the initial order. State v. Anthony D.B. 2000 WI 94, 137 Wis. 2d 1, 614 N.W.2d 435.

It is within the committed person's discretion to ask for an independent examination. The trial court does not have discretion to refuse the request. State v. Thiel, 2001 WI App 32, 241 Wis. 2d 465, 626 N.W.2d 26.

The 6-month time period in sub. (1) for an initial reexamination is mandatory. When DHFS took nearly two years to provide a reexamination. release was the only appropriate remedy. State ex rel. Marbeny v. Macht, 2002 WI App 133, ___ Wis. 2d ___, 648 N.W.2d 522.

980.08 *Petition for* supervised release. (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

(2) If the person files a timely pctition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to s. 980.03 (2) (a), refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

(3) Within 20 days after receipt of the pctition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (e). If any such examiner believes that the person is appropriate for supervised release under the criterion specified in sub. (4), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under this subsection as provided under s. 51.20 (18) (a).

(4) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d). The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the person is not continued in institutional care. In making a decision under this subsection, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental condition. where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the pcrson is a serious child sex offender. A decision under this subsection on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(5) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department shall make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence, as determined by the department under s. 980.105. The department and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational Services, and alcohol or other drug abuse treatment. In developing a plan for where the person may reside while on supervised release, the department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treahnent and services identified in the plan. Tbe plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the pcrson will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also the person's county of residence.

(6m) An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. (5). A person on supervised release is subjcct to the conditions set by the court and to the rules of the department. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under the rules of the department. The department shall submit a statement showing probable cause

of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department may detain the person in a jail or in a hospital. center or facility specified by s. 51. 15(2). The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated. or that the safety of others requires that supervised release be revoked. If the court deterniines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under s. 980.09 or until again placed on supervised release under this section.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L. 3232p to 3238d; 1999 a. 32; 2001 a. 16.

Cross Reference: See also ch. HFS 98, Wis. adm. code.

Sub. (6m) (formerly s. 980.06 (2) (d)} requires post–hearing notice to the local law enforcement agencies. In re Commitment of Goodson, 199 Wis. 2d 426.544 N.W.2d 611 (Ct. App. 1996).

Whether in a proceeding for an initial ch. 980 commitment or a later petition for supervised release, there is no requirement that the state prove the person is treatable. State v. Seibert, 220 Wis. 2d 308. 582 N.W.2d 745 (Ct. App. 1998).

There is no exception under sub. (5) for a court to refuse to order release after it determines under sub. (4) that release is appropriate. If treatment programs are unavailable, the court shall order a county. through DHFS. to prepare a plan and place the person on supervised release in that county The court may order the county to create whatever programs or facilities are necessary to accommodate the supervised release. State v. Sprosty, 227 Wis. 2d 316, 595 N.W.2d 692 (1999).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389,597 N.W.2d 697 (1999).

An institutionalized sex offender who agreed to a stipulation providing supervised release. giving up his right to a jury trial on his discharge petition in exchange, had a constitutional right to enforcement of the agreement. State v. Krueger, 2001 WI App 76,242 Wis. 2d 793,626 N.W. 2d 83.

An indigent sexually violent person is constitutionally entitled to assistance of counsel in bringing a first appeal as of right from a denial of his or her petition for supervised release. State ex rel. Seibert v. Macht, 2001 WI 67,244 Wis. 2d 378.627 N.W.2d 881.

A person subject to a proceeding to revoke supervised release is entitled to the same due process protections as afforded persons in probation and parole revocation proceedings. Notice of the grounds that are the basis for the revocation must be given. A court can only base a revocation on the grounds of public safety under sub. (6m) when notice has been properly given. State v. VanBronkhorst, 2001 WI App 190,247 Wis. 2d 247,613 N.W.2d 236.

A sexual assault need not occur and the person's behavior need not be criminal before the court can conclude that there is a substantial probability that a person will reoffend if institutional care is not continued. The relevant inquiry under sub. (4) is whether the behavior indicates a likelihood to reoffend. State v. Sprosty, 2001 WI App 231,248 Wis. 2d 480, 636 N.W.2d 213.

A trial court's decision whether to grant a request for conditional release is subject to a discretionary standard of review of whether the trial court properly exercised its discretion in making its decision. State v. Wenk, 2001 WI App 268,248 Wis. 2d 714, 637 N.W.2d 417.

980.09 Petition for discharge; procedure. (1) PETITION WITH SECRETARY'S *APPROVAL.* (a) If the secretary deterniines at any time that a person committed under this chapter is no longer a sexually violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(b) At a hearing under this subsection, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the petitioner's existing commitment order by authorizing supervised release.

(2) PETITION WITHOUT SECRETARY'S APPROVAL. (a) A person may petition the committing court for discharge from custody or supervision without the secretary's approval. At the time of an examination under s. 980.07 (1), the secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department's examination under s. 980.07. If the person docs not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this paragraph, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03. The district attorney or the department of justice, whichever filed the original petition, shall represent the state at a hearing under this paragraph. The hearing under this paragraph shall be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the person's existing commitment order by authorizing supervised release.

History: 1993 a. 479; 1999 a. 9.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279.54 1N.W.2d 115 (1995).

Sub. (2) (a) does not contemplate an evidentiary hearing as is provided under sub. (2) (b). Under sub. (2) (a), the hearing is a paper review of the reexamination reports that allows the committing court to weed out frivolous petitions. State v. Paulick, 213 Wis. 2d 432,570 N.W.2d 626 (Ct. App. 1997).

The right to counsel under sub. (2) (a) is subject to the same standards and procedures for resolving right to counsel issues as in criminal cases. State v. Thiel, 2001 WI App 32,241 Wis. 2d 465.626 N.W.2d 26.

Sub. (2) (a) does not allow unlimited submission of evidence, but does allow the submission of a second medical examination report. State v. Thayer. 2001 WI App 51,241 Wis. 2d 417, 626 N.W.2d 811.

980.10 Additional discharge petitions. In addition to the procedures under s. 980.09, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate. If the person has not previously filed a petition for

discharge without the secretary's approval, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate.

History: 1993 a. 479.

Persons committed under ch. 980 must he afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

980.104 Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect. (1) In this section. "judgment relating to a sexually violent offensc" means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental discase or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under s. 980.02 (2) (a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

(a) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall revcrsc, set aside, or vacate the judgment under s. 980.05 *(5)* that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the department.

(b) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02 (2) (a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an an order entered under sub. (2) as from a final judgment.

History: 2001 a. 16.

980.105 Determination of county of residence. The department shall determine a person's county of residence for the purposes of this chapter by doing all of the following:

(1) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(2) The department shall apply the criteria for consideration of residence and physical presence under sub. (1) to the facts that existed on the date that the person Committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition was filed under s. 980.02.

History 1995 a. 276: 2001 a. 16.

980.11 Notice concerning supervised release or discharge. (1) In this section:

(a) "Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under s. 980.02 (2) (a).

(b) "Mcmber of the family" means spouse, child, sibling, parent or legal guardian.

(c) "Victim" means a person against whom an act of sexual violence has been committed.

(2) If the court places a person on supervised relcasc under s. 980.08 or discharges a person under s. 980.09 or 980.10, the department shall do all of the following:

(am) Make a reasonable attempt to notify whichever of the following persons is appropriate, if hc or she can bc found, in accordance with sub. (3):

1. The victim of the act of sexual violence.

2. An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

3. The victim's parent or legal guardian, if the victim is younger than 18 years old.

(bm) Notify the department of corrections.

(3) The notice under sub. (2) shall inform the department of corrections and the person under sub. (2) (am) of the name of the person committed under this chapter and the date the person is placed on supervised release or discharged. The department shall send the notice, postmarked at least 7 days before the date the person committed under this chapter is placed on supervised release or discharged, to the department of corrections and to the last–known address of the person under sub. (2) (am}.

(4) The department shall design and prepare cards for persons specified in sub. (2) (am) to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this chapter and any other information the department determines is necessary. The department shall provide the cards, without charge, to the department of justice and district attorneys. The department of justice and district attorneys shall provide the cards, without charge, to persons specified in sub. (2) (am). These persons may send completed cards to the department of health and family services. All records or portions of records of the deparhnent of health and family services that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1), except as needed to comply with a request by the department of corrections under s. 301.46 (3) (d).

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1995 a. 440; 1997 a. 181; 1999 a. 9.

980.12 Department duties; costs. (1) Except as provided in ss. 980.03 (4) and 980.08 (3), the department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating to the evaluation, treatment and care of persons evaluated or committed under this chapter.

(2) By February 1, 2002, the dcpartmcnt shall submit a report to the legislature under s. 13.172 (2) concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 stats., or s. 980.08 and the effectiveness of the treatment in the cases in which its use has been required.

History: 1993 a. 479; 1997 a. 284; 1999 a. 9.

980.13 Applicability. This chapter applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on or after June 2, 1994.

History: 1993 a. 479.

Chapter Psy 1

AUTHORITY AND DEFINITIONS

Psy 1.01 Authority. The rules in chs. Psy 1 to 5 arc adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 (2), 455.045 (3), 455.065 (1), 455.065 (3), 455.065 (5), 455.08 and 455.09 (1) (g), Stats.

History: Cr Register, September, 1991, No 429, eff **1-1-91, am. Register, June, 1999, No. 522, eff. 7–1–99.**

Psy 1.02 Definitions. As used in chs. Psy 1 to 5:

(1) "Applicant" means any person who applies for a license from the board.

(2) "Board" means the psychology examining board.

Note: The board office is located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708, telephone (608) 266-0070.

(3) "Client" mcans the individual, group, business, agency, school, organization, or association for whom the licensee of the board provides professional services for which the licensee is usually and customarily compensated. The term "client" includes the term and concept of 'patient."

(4) "Department" means the department of regulation and licensing.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which the board determines whether or not to revoke or suspend a license, to reprimand a licensee, to limit a license, or refuse to renew a license.

(6) "Gross negligence in the practice of psychology" means the performance of professional services that do not comply with an accepted standard of practice that has a significant relationship to the protection of the health, safety or welfare of patient or public, and that are performed in a manner indicating that the licensee knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.

(7) "One contact hour" means at least 50 minutes that the psychologist spends directly engaged in a continuing education activity approved by the board.

(8) "The private practice of school psychology" means providing psycho-educational evaluation and intervention for the prevention and treatment of educationally relevant problems. Intervention includes service to the student or consultation with persons who affect the student's education program.

History: Cr. Register, September. 1991, No. 429, eff. 10–1–91; **am. (5), Register, June, 1999, No. 522 eff. 7–1–99.**

Chapter Psy 2

REQUIREMENTS FOR EXAMINATION AND LICENSURE OF PSYCHOLOGISTS

Psy 2.01 Application procedure.
Psy 2.015 Application abandonment.
Psy 2.02 Scheduling of examinations
Psy 2.03 Unauthorized assistance.
Psy 2.04 Controls.
Psy 2.05 Passing scores.
Psy 2.06 Failure and review.
Psy 2.07 Claim of examination error.
Psy 2.08 Reexamination.
Psy 2.09 Rcquircincnts for licensure for those holding a doctoral degree in psychology.
Psy 2.12 Requirements for persons holding a license to practice psychology in another state.
Psy 2.13 Doctoral degrees in psychology outside the U.S. and Canada.
Psy 2.14 Tempoiary practice.

Psy 2.01 Application procedure. Except as provided under **s.** Psy 2.09 (5), the board shall act on an application for liccnsure as a psychologist only after all of the following materials, which shall be documented in English, have been received:

(1) The properly completed and signed application form.

Note: Applications are available upon request to the hoard office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The application fee authorized by s. 440.05 (1), Stats.

(3) Official transcripts of graduate training, properly attested to by the degree granting institution and submitted by the institution directly to the board.

(4) Documentation of any additional relevant education and appropriate experience.

(5) The "Supervised Psychological Experience" form which has been filled out by a psychologist who has firsthand knowledge of the applicant's experience relating to psychology.

(6) The "Nature of Intended Practice of Psychology" form.

(7) Evidence of successful completion of an examination on the practice of psychology approved by the board.

(8) Proof of successful completion of the written examination on the elements of practice essential to the public health, safety or welfare.

(9) For applicants under **s.** Psy 2.13, as required by the board, documentation of additional supervised experience in the United States and documentation of English proficiency.

(10) Verification of the applicant's licensure in all states or countries in which the applicant has ever held a license.

(11) For applicants who have a pending criminal charge or have been convicted of a crime: all related information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the duties of the licensed activity.

(12) For applicants licensed in another state wishing to be exempted from the examination in sub. (7), proof of completion of continuing education requirements as specified in **s.** Psy 2.12.

History: Cr. Register, September, 1991, No. 429, eff. **10-1-91:** am. {intro.), Register. August, 1993, No. 452, eff. 9–1–93; correction in (intro.) made under **s.** 13.93 (2m) (b) 7., Stats., Register, May, 1995, No. 473; am. (3), Register. January, 1997, No. 493, eff. 2–1–97; am. (1), (2) and (7), Register, June, ***1999,*** No. 522, eff. 7–1–99.

Psy 2.015 Application abandonment. An applicant who files an application but who does not comply with a request for information related to the application within one year of the date of the board's last request shall file a new application. An applicant who files an application but who does not fully complete the application within 3 years of the date of the application shall file a new application.

History: Cr., Register, January, 1997, No. 493, eff. 2–1–97.

Psy 2.02 Scheduling of examinations. (1) Examinations shall be held at least twice a year at a time and place designated by the board. Notice of the next scheduled examinations may be obtained by contacting the department.

(2) No applicant may be admitted to the examination on the professional practice of psychology unless the requirements stated in **s.** Psy 2.01 (1) to (3) have been met.

(3) No applicant may be admitted to the examination on the elements of practice essential to the public health, safety or welfare unless the rcquiremcnts stated in **s.** Psy 2.01 (1) to (7) and (9) to (12) have been met at least 30 days prior to the board meeting preceding the date of the examination.

History: Cr. Register. September, 1991, No. 429, eff. 10–1–91; **am. (2),** Register, June, 1999, No. 522, eff. 7–1–99: **CR 02421: am. (2) and (3) Register August 2002 No. 560, eff. 9 – 142.**

Psy 2.03 Unauthorized assistance. The board may withhold the score of an applicant who gives or receives unauthorized assistance during examinations. The board may consider this applicant for retesting at a future time.

History: Cr. Register, September. 1991, No. 429, eff. 10–1–91.

Psy 2.04 Controls. The board chairperson or proctor may announce time limits and other necessary controls prior to the examinations.

History: Cr. Register, September, 1991, No. 429, eff. 10–1–91.

Psy 2.05 Passing scores. (1) The passing scores set by the board represent the minimum competency required to protect public health and safety.

(2) The examination for professional practice of psychology and the examination on the elements of practice essential to the public health, safety or welfare are scored separately. **An** applicant shall achieve a passing score on each of the required examinations to qualify for licensnre.

(3) The board accepts the recommendations of the association of state and provincial psychology boards for the passing score on the examination for professional practice of psychology.

(4) To pass the examination on the elements of practice essential to the public health, safety or welfare, the applicant shall receive a score determined by the board to represent minimum competence to practice. The board shall make the determination of the passing score after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

History: Cr. Register, September, 1991, No. 429, eff. 10–1–91; r. andrecr., Register, January, 1997, No. 493, eff. 2–1–97.

Psy 2.06 Failure and review. (1) An applicant who fails the examination on elements essential to health, safety and welfare may request a review of that examination. The applicant must file a written request to the board within 30 days of the date on which examination results were mailed or reported.

(2) The time for review shall be limited to time allowed for examination administration.

(3) The examination shall be reviewed only by the applicant and in the presence of the proctor.

(4) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.

(5) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing on the provided form. These comments shall be retained and made available to the applicant for use at a subsequent hearing.

(6) An applicant may review the examination only once.

History: Cr. Register, September, 1991, *No.* 429, eff. 10–1–91.

Psy 2.07 Claim of examination error. (1) An applicant wishing to claim examination error must file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address.

(b) The type of license applied for.

(c) A description of the perceived error, including specific questions or procedures claimed to be in error.

(d) The facts that the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The board shall review the claim and notify the applicant in writing of the board's decision and any resulting grade changes.

(3) If the decision does not result in the applicant passing the examination, the applicant may request a hearing under s. RL 1.05.

History: Cr. Register, September, 1991. No. 429, eff. 10–1–91.

Psy 2.08 Reexamination. An applicant who fails to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in s. 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3–month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant may not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

History: Cr. Register. September. 1991, *No.* 429. eff. 10–1–91; r. and recr., Register, May, 2000, No. 533. eff. 6–1–00.

Psy 2.09 Requirements for licensure for those holding a doctoral degree in psychology. (1) EDUCATIONAL REQUIREMENTS. An applicant for a license under this section shall possess a doctoral degree in psychology. A doctoral degree in psychology is either a degree granted by an accredited college or university as defined in s. 455.04 (1) (c), Stats., that is represented by an official transcript of credits as being a "doctoral degree in psychology," a doctoral degree with a major in psychology from a department of psychology, or a program which is designated by the board to be equivalent to a doctorate in psychology by meeting the following requirements:

(a) Training in professional psychology consisting of doctoral training offered in a regionally accredited institution of higher education.

(b) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

Note: Prior to October 1, 1999, supervisors were required to he licensed or license eligible. The requirement that the primary supervisor be a licensed psychologist applies to supervised experience commenced after October 1, 1999.

(c) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(d) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

(e) The program must be an integrated, organized sequence of study.

(f) There must be an identifiable psychology faculty on site and a psychologist responsible for the program.

(g) The program must have an identifiable body of students who are matriculated in that program for a degree.

(h) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

(i) The curriculum shall encompass a minimum of 3 academic years of full–time graduate study, at least one of which shall be in full–time residence. In addition to the instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of 3 or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas: a) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology; b) Cognitive–affective bases of behavior: learning, thinking, motivation, emotion; c) Social bases of behavior: social psychology, group processes, organizational and systems theory; and d) Individual differences: personality theory, human development, abnormal psychology. In addition, all professional education programs in psychology will include course requirements in specialty areas.

(3) SUPERVISED EXPERIENCE REQUIREMENTS. (a) *Conditions of supervised experience.* 1. A psychological trainee shall complete 3,000 hours of supervised experience as a prerequisite to licensure as a psychologist. All 3,000 hours must follow graduate work in psychology, either a master's in psychology or a minimum of 30 hours of doctoral level course work in psychology. These hours shall be accumulated at not less than 16 hours nor more than 40 hours per week. The 3,000 hours of experience shall be in a setting and shall include the activities appropriate to the intended area of practice. It shall be the responsibility of the applicant to demonstrate the appropriateness of the setting and the activities to the intended area of practice.

2. The first 1,500 hours of the experience should be under the direction of one licensed psychologist who satisfied the requirements of pars. (b) and (c) and who shall be responsible for the integrity and the quality of the training. It shall be planned, organized and integrated, and appropriate to the intended area of practice. There shall be a minimum of 2 hours per week of regularly scheduled formal face–to–face individual supervision with the specific intent of dealing with services rendered directly by the trainee. There must also be at least 2 additional hours per week in learning activities such as: case conferences, seminars addressing practice issues, co--therapy with a staff person including discussion, group supervision or additional individual supervision.

3. The second 1,500 hours of the experience must include a minimum of 1 hour per week of regularly scheduled formal face–to–face individual supervision with the specific intent of dealing with *the* services rendered directly by the trainee.

4. A minimum of 1,500 hours must follow completion of all the requirements for the doctoral degree.

5. To obtain a diversity of training, supervised experience may be supervised by other licensed or license–eligible psychologists, with the understanding that the licensed or license–eligible psychologist specified in subd. 2. will continue to be responsible for the overall integrity and quality of the trainee's psychological work.

6. Hours obtained through praeticum, clerkship or externship experiences are considered part of the educational process and may not be used to satisfy this requirement.

7. The supervisor shall have sufficient knowledge of the supervisee's [trainee's] clients to ensure effective service. This

may include ongoing face–to–face contact with the client. The progress of the work must be monitored on a regular basis by the supervisor to ensure that legal, ethical, and professional responsibility is assumed by the supervisor for all services rendered.

8. Clients shall be informed that the psychological trainee is receiving supervision and that the client's case will be discussed in the context of required supervision. The trainee must inform potential clients in writing of his or her trainee status, lack of license, and of the possibility that insurance companies may not reimburse services rendered by the nonlicensed trainee. Fees for client services may neither be billed independently nor accepted by the trainee.

9. The experience required shall consist of at least 25% face–to–face client contact and at least 40% direct service for the purpose of providing psychological service. For the purposes of this subsection direct service means those activities a psychologist performs that are directly related to providing psychological services to a client, such as note and report writing, studying test results, case consultation and reviewing published works relating to the client's needs.

10. There shall be multidisciplinary team membership with the trainees being teamed with other professional specialists in serving clients. It is desirable that trainees also be teamed with other psychologists and other trainees. It is the responsibility of the applicant to demonstrate that he or she had a variety of role models within the field of psychology.

11. The trainee should have experience in a range of direct services. The clients served should be consistent with the target population of intended practice addressing a broad spectrum of psychological problems. A variety of other service activities that are appropriate to the intended area of practice include, but are not limited to, those of the following: intake service, administration, case staffings, research activities, inscrvice program activities, organizational development and consultation.

(b) *Qualifications of supervisor.* The trainee's primary supervisor shall be licensed psychologists and shall have adequate training, knowledge and skill to render competently any psychological service that a psychological trainee undertakes. The supervisor shall have had at least 3 years of post–licensure experience and shall have had training or experience in supervision of psychological work. The supervisor may not permit a trainee to engage in any psychological practice that the supervising psychologist cannot competently perform. Supervisors shall not be a relative by blood or marriage nor be involved in any other dual relationship which obliges the supervisor to the trainee.

(c) *Responsibility of supervisor.* **All** supervisors shall be legally and ethically responsible for the activities of the psychological trainee. Supervisors shall be available or make appropriate provision for emergency consultation and intervention. Supervisors shall be able to interrupt or stop the trainee from practicing in given cases and to stop the supervisory relationship if necessary. All supervisors of the trainee shall be required to provide a written evaluation of the supervised experience. Prepared evaluations or reports of progress, including strengths and weaknesses, shall be written and discussed with the trainee on at least a quarterly basis.

(d) Qualifications *of psychological trainee.* The psychological trainee shall have the background training and experience that is appropriate preparation for the supervised training activities. The supervisor is responsible for determining the adequacy of the trainee's preparation for the tasks to be performed.

Note: All supervisors of a psychological trainee are encouraged to register with the board to receive information on the supervisory responsibilities to share with a prospective psychological trainee.

(4) APPEARANCE BEFORE THE BOARD. The applicant shall be required to appear before the board in person prior to licensure to allow the board to make such inquiry of them as to qualifications and other matters as it considers proper.

(5) INTERIM DETERMINATION. A person possessing a doctoral degree in psychology under sub. (1) who has completed the first 1,500 hours of supervised experience under sub. (3) may on the application provided by the board request a determination by the board that the person has met all requirements for a license except completion of the second 1,500 hours of supervised experience under sub. (3) and passage of the examinations under s. 455.045 (1), Stats.

Note: An application may he obtained upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin, 53708.

History: Cr. Register, September, 1991, No. 429. eff. 10–1–91; am. (2) (a) 1., 4. and 5., Register, November, 1992. No. 443, eff. 12–1–92; cr. (4), Register, August, 1993, No. 452, eff. **9–1–93;** am. (1) (a), *(3)*(a) 2., 10., (h), (c) and (4)., r. (1) (j) and (2), Register, June, 1999, No. 522, eff. 7–1–99; correction in **(5)** made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522.

Psy 2.12 Requirements for persons holding a license to practice psychology in another state. **(1)** LICENSURE BY COMITY. Applicants who are licensed in another state must meet the requirements of s. Psy 2.01. However, the examination on the practice of psychology shall be waived if the standards of the licensing authority of the other state were substantially equivalent to the standards of this state at the time of initial licensure, and if the applicant submits proof of completion of at least 40 contact hours of approved continuing education within 2 years prior to application.

(2) LICENSURE BY RECIPROCITY. Applicants who are licensed in another state which is signatory to the agreement of reciprocity of the association of state and provincial psychology boards, and who apply on or after the effective date that the board becomes signatory to that agreement, shall meet the requirements of s. Psy 2.01 (1), (2), (6), (8), (10) and (11).

(3) LICENSURE OF HOLDERS OF THE CERTIFICATE OF PROFESSIONAL QUALIFICATION. Applicants who are licensed in another state who hold the certificate of professional qualification in psychology issued by the association of state and provincial psychology boards shall meet the requirements of s. Psy 2.01 (1), (2), (6), (8), (10) and (11).

(4) LICENSURE OF SENIOR PSYCHOLOGISTS. Applicants who have been licensed for 20 or more years in another licensing jurisdiction of the United States or Canada that had requirements for licensure substantially equivalent to the requirements for licensure in this state at the time of original licensure, and who have never been disciplined by the licensing board of any state or province, shall meet the requirements of s. Psy 2.01 (I), (2), (6), (8), (10) and (11).

History: Cr. Register, September, 1991, No. 429, eff. 10–1–91; renum. to be Psy 2.12 (1), cr. (2), **(3)** and (4), Register, June, 1999, **No.** 522, eff. 7–1–99.

Psy 2.13 Doctoral degrees in psychology outside the U.S. and Canada. In addition to the supervised experience requirements set forth in s. Psy 2.09 (3), all applicants with doctoral degrees in psychology from universities outside the United States and Canada may be required to submit documentation of additional supervised experience within the U.S. Applicants for licensure on the basis of degrees from colleges and universities from outside the United States shall also pass the examination for the professional practice of psychology and may also be required to pass an English proficiency examination approved by the board.

History: Cr. Register, September, 1991. No. 429, eff. 10–1–91; correction made under **s.** 13.93 (2m) (b) **7.**, Stats., Register, May, 1995, No. 473.

Psy 2.14 Temporary practice. The following apply to the temporary practice of psychology by a psychologist who is licensed or certified by a similar examining board of another state or territory of the United States or of a foreign country or province who offers services as a psychologist in this state under s. 455.03, Stats.

(1) Any portion of a calendar day in which the psychologist provides services in this state is considered one working day.

(2) A psychologist provides psychological services in this state whenever the patient or client is located in this state, regardless of whether the psychologist is temporarily located in this state or is providing services by electronic or telephonic means from the state where the psychologist is licensed.

History: Cr. Register, **June,** 2001. No. **546,** eff. 7–1–01.

Chapter Psy 3

REQUIREMENTS FOR THE PRIVATE PRACTICE OF SCHOOL PSYCHOLOGY

Psy 3.01	Application procedure.
Psy 3.02	Requirements for a license for the private practice of school psychology.
Psy 3.03	Requirements for persons holding a license for the private practice of school psychology in another state.
Psy 3.04	Scheduling of examinations.
Psy 3.05	Unauthorized assistance.
Psy 3.06	Controls.
Psy 3.07	Passing grade.
Psy 3.08	Failure and review.
Psy 3.09	Claim of examination error.
Psy 3.10	Reexamination.

Psy 3.01 Application procedure. The board shall act on an application for licensure for the private practice of school psychology only after all of the following niatcrials, which shall be documented in English, have been received:

(1) The properly completed and signed application form.

Note: Applications arc available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The application fee authorized by s. 440.05 (2), Stats.

(3) Official transcripts of graduate training, properly attested to by the degree granting institution and submitted by the institution directly to the board.

(4) Documentation that the applicant holds a regular license as a school psychologist by the Wisconsin department of public instruction under s. PI 3.53.

(5) Documentation of additional relevant education and appropriate experience.

(6) The "Experience Verification" form that has been filled out by a psychologist who has firsthand knowledge of the applicant's experience related to psychology.

(7) The "Nature of Intended Private Practice of School Psychology" form.

(8) Verification of the applicant's licensure andccrtification in all states or countries in which the applicant has ever held a license.

(9) For applicants who have a pending criminal charge or have been convicted of a crime, all information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction arc substantially related to the duties of the licensed activity.

(10) Proof of successful completion of the written examination on the practice of school psychology.

(11) Proof of completion of the written examination in the elemcnts of practice essential to the public health, safety or welfare.

(12) For applicants licensed in another state wishing to be exempted from the examination in sub. (10), proof of completion of continuing education requirements as specified in s. Psy 3.03.

History: Cr. Register. September. 1991, No. 429. eff. 10-1–91; am. (3), Register, January, 1997, No. 393. eff. 2–1–97; am. (1) and (2), Register, June, 1999, No. 522, eff. 7–1–99.

Psy 3.02 Requirements for a license for the private practice of school psychology. (1) LICENSURE BY THE DEPARTMENT OF PUBLIC INSTRUCTION. Only persons holding a regular license as a school psychologist issued by the Wisconsin department of public instruction under s. PI 3.53 may be licensed for the privatc practice of school psychology.

(2) EXPERIENCE. An applicant for a license for the private practice of school psychology shall complete one of the following:

(a) One year of successful experience as a school psychologist undcr the supervision of a cooperating school psychologist and a written recommendation from the school system administration; or

(b) One year of internship in school psychology under the supervision of a licensed school psychologist and a written recommendation from the school system administration. The internship shall occur after completion of most or all coursework in a training program. The internship shall be part of an approved program and shall be taken for a maximum of 12 graduate semester credits.

(3) APPEARANCE BEFORE THE BOARD. The applicant may be required to appear before the board in person prior to licensure to allow the board to make such inquiry of them as to qualifications and other matters as it considers proper.

History: Cr. Register. September, 1991, No. 429, eff. 10–1–91.

Psy 3.03 Requirements for persons holding a license for the private practice of school psychology in another state. Applicants who are licensed in another state must meet the requirements of s. Psy 3.01. However, the examination on the practice of school psychology shall be waived if the standards of the licensing authority of the other state were substantially equivalent to the standards of this state at the time of initial licensure, and if the applicant submits proof of completion of at least 40 contact hours of approved continuing education within 2 years prior to application.

History: Cr. Register, September, 1991, No. 429, eff. 10-1–91.

Psy 3.04 Scheduling of examinations. (1) Examinations shall be held at least twice a year at a time and place designatcd by the board. Notice of the next scheduled examinations may be obtained by contacting the department.

(2) No applicant may be admitted to the examination on the elements of practice essential to the public health, safety and welfare unless the requirements stated in s. Psy 3.01 (1) to (10) have bcen met before the first day of the month immediately prior to the board meeting preceding the date of the examination.

History: Cr. Register. September, 1991, No. 429, eff. 10-1–91.

Psy 3.05 Unauthorized assistance. The board may withhold the score of an applicant who gives or receives unauthorized assistance during examinations. The board may consider this applicant for retesting at a future time.

History: Cr. Register. September, 1991, No. 429, eff. 10–1–91.

Psy 3.06 Controls. The board chairperson or proctor may announce time limits and other necessary controls prior to the examinations.

History: Cr. Register, September. 1991, No. 429, eff. 10-1–91.

Psy 3.07 Passing grade. (1) EXAMINATION ON THE PRACTICE OF SCHOOL PSYCHOLOGY. To pass the examination each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board may adopt the passing grade recommended by the national association of school psychologists.

(2) EXAMINATION ON ELEMENTS ESSENTIAL TO HEALTH, SAFETY AND WELFARE. To pass this examination, each applicant shall receive a score of 75% correct or above.

History: Cr. Register. September, 1991, No. 429, eff. 10-1–91.

Psy 3.08 Failure and review. (1) An applicant who fails the examination on elements essential to health, safety and welfare may request a review of that examination. The applicant must file a written request to the board within 30 days of the date on which examination results were mailed or reported.

(2) The time for review shall be limited to time allowed for examination administration.

(3) The examination shall be reviewed only by the applicant and in the presence of the proctor.

(4) The proctor shall not respond to inquiries by the applicant regarding allegations of examination error.

(5) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing on the provided form. These comments shall be retained and made available to the applicant for use at a subsequent hearing.

(6) An applicant may review the examination only once

History: Cr. Register, Scptembcr, 1991, No. **429.** eff. **10-1-91.**

Psy 3.09 Claim of examination error. (1) An applicant wishing to claim examination error must file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address.

(b) The type of license applied for.

(c) **A** description of the perceived error, including specific questions or procedures claimed to be in error.

(d) The facts that the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The board shall review the claim and notify the applicant in writing of the board's decision and any resulting grade changes.

(3) If the decision does not result in the applicant passing the examination, the applicant may request a hearing under **s.** RL 1.05.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Psy 3.10 Reexamination. An applicant who fails to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in **s.** 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3–month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant may not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

History: Cr. Register. September. 1991, No. 429, **eff.** 10-1-91; **r. and recr., Register, May, 2000, No. 533, eff. 6-1-00.**

Chapter Psy 4

REQUIREMENTS FOR RENEWAL

Psy 4.01 Biennial renewal.
Psy 4.02 Continuing education.
Psy 4.03 Renewal of a lapsed license

Psy 4.01 Biennial renewal. On or before September 30 of the odd–numbered year following issuance of the license, the licensee shall apply for renewal to the department and submit the fee specified in s. 440.08 (2) (a), Stats., and shall meet the continuing education reyuirements specified in s. Psy 4.02.

History: Cr. Register. September, 1991, No. 429, eff. 10–1–91; am. Register, June. 1999, No. 522, eff. 7–1–99.

Psy 4.02 Continuing education. (1) REQUIREMENTS FOR CONTINUING EDUCATION. (a) Unless granted a postponement or waiver under par. (g), every licensee shall complete at least 40 hours of board–approved continuing education in each biennial registration period, as specified in s. 455.06, Stats. The board may require that not more than 20 continuing education hours in each biennial registration period be acquired within specified topic areas.

(b) Continuing education hours may apply only to the registration period in which the hours are acquired. If a license has been allowed to lapse, the board may grant permission to apply continuing education hours acquired after lapse of the license to a previous biennial period of licensure during which required continuing education was not acquired. In no case may continuing education hours be applied to more than one biennial period.

(c) To meet the continuing education requirement, a licensee shall submit to the board a certificate of attendance.

(d) Unless granted a postponement or waiver under par. (g), a licensee who fails to meet the continuing education requirements by the renewal deadline shall cease and desist from practice.

(e) During the time bctwccn initial licensure and commencement of a full 2–year licensure period new licensees shall not be required to meet continuing education requirements.

(f) Applicants from other states applying under s. 455.04 (1) (e) or (4) **(9,** Stats., shall submit proof of completion of at least 40 hours of continuing education approved by the board within 2 years prior to application.

(g) *A* licensee may apply to the board for a postponement or waiver of the requirements of this section on grounds of prolonged illness or disability, or on other grounds constituting extreme hardship. The board shall consider each application individually on its merits, and the board may grant a postponement, partial waiver or total waiver as deemed appropriate.

(h) The board may grant an exemption from the rcquircments of this section to a licensee who certifies to the board that he or she has permanently retired from the active practice of psychology.

(i) A licensee who has been granted an exemption from the requirements of this section based on retirement from the active practice of psychology may not return to the active practice of psychology without submitting evidence satisfactory to the board of having completed at least 40 credits of continuing education for each of the biennia during which the liccnsce was granted an exemption.

(2) APPROVAL OF CONTINUING EDUCATION PROGRAMS. The board shall approve all of the following programs and courses:

(a) Continuing education programs and courses sponsored or co–sponsored by a presenter approved by the committee for the approval of continuing education sponsors of the American psychological association.

(b) Educational programs recognized as approved at the time of attendance as "category I" continuing medical education programs by the council on medical education of the American medical association or the American osteopathic association.

(c) Graduate level courses or continuing education courses relevant to the professional practice of psychology offered by accredited colleges and universities.

(d) Continuing education courses approved by the psychology licensing board in another state where the participant is also licensed.

(4) PROOF OF ATTENDANCE AT CONTINUING EDUCATION PROGRAMS. Applicants for renewal shall be asked to certify their attendance at required continuing education. The board shall conduct a random audit of 10 percent of all licensees on a biennial basis for compliance with continuing education requirements, and shall audit any licensee who is under investigation by the board for alleged misconduct.

(5) APPROVAL OF UNCOMPENSATED EVALUATION ASSISTANCE SERVICES. (a) The board shall accept for continuing education credit voluntary, uncompensated services provided by psychologists in assisting the department of health and family services in the evaluation of community outpatient mental health programs, as defined in s. 51.01 (3n), Stats., and approved by the department of health and family services according to rules promulgated under s. 51.42 (7) (b), Stats. Four hours of assistance, including hours expended in necessary training by the department of health and family services, shall be deemed to equal one hour of acceptable continuing education for the purposes of this section.

(b) Psychologists wishing to apply for continuing education credit under this subsection shall register in advance with the board, and shall notify the board on forms provided by the board of the dates and the total number of hours in any biennium for which the applicant will be available to provide assistance. The board shall make referrals to the department of health and family services in the order received pursuant *to* requests for assistance received by the board from that department.

Note: Forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. **Box** 8935, Madison, WI 53708.

(6) LIMITATION ON CREDIT. The board may grant no more than 20 hours of continuing education credit per biennium for self–developed continuing education programs, no more than 20 hours of credit for uncompensated evaluation assistance services, no more than 20 hours of credit for any combination of self–developed continuing education programs and uncompensated evaluation assistance services, and no more than 20 hours of credit within any specific continuing education program.

History.: Cr. Register. September, 1991, No. 429, eff. 10–1–95; cr. (5), (6). Register, October, 1995, No. 478, eff. 11–1–95; am. (1) (a), (b) and (d), (2) (a) and (3), cr. (1) (g) to (i). (2) (f) and (4), Register, February, 1996, No. 482, eff. 3–1–96; r. (4) **(c).** am. (6), Register, December, 1997, No. 504, eff. 1–1–98; corrections in *(5)* made under s. 13.93 (2m) (b) 6., Stats., Register, December, 1997, No. 504; r. and recr. (2) and (4), r. (3), Register, June, 1999, No. 522, eff. 7–1–99; **r.** (4) **(b), Register, June. 2001, No.** 546, **eff. 7–1-01.**

Psy 4.03 Renewal of a lapsed license. Failure to renew a license by September 30 of odd–numbered years shall cause the

license to lapse. **A** licensee who allows the license to lapse may apply to the board for renewal of the license as follows:

(1) If the licensee applies for renewal of the license less than 5 years after its expiration, the license shall be renewed upon payment of the renewal fee and fulfillment of the continuing education requirements.

(2) If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make an inquiry as it finds necessary to determine whether the applicant is competent to practice as a psychologist or private practice school psychologist in this state, and shall impose any reasonable conditions on renewal of the license that the board considers appropriate. An applicant under this subsection is presumed *to* be competent to practice as a psychologist or private practice school psychologist in this state if at the time of application the applicant is licensed by a similar examining board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the board, are equivalent to or higher than the requirements for licensure as a psychologist under s. 455.04 (1), Stats., or as a private practice school psychologist under s. 455.04 (4). Stats. Notwithstanding any presumption of competency under this subsection, the examining board shall require each applicant under this subsection to pass the appropriate examination specified under s. 455.045 (1) (b) or (2) (b), Stats.

History: Cr. Register, September. 1991, No. 429. eff. 10–1–91; am. Register. November, 1992. No. 443, eff. 12 1–92; am. (intro.) and (2), Register, June, 1999, No. 522. *eff. 7–1–99.*

Chapter Psy 5

CONDUCT

Psy 5.01 Professional conduct. Psy 5.02 Actions subsequent to disciplinary proceedings.

Psy 5.01 Professional conduct. The practice of psychology is complex and varied and, therefore, allows for a broad range ofprofessional conduct. The following acts constitute unprofessional conduct by applicants for licensure and licensees of the board and are prohibited. Complaints regarding these acts shall be investigated and may lead to disciplinary proceedings.

(1) Engaging in false, fraudulent, misleading or deceptive advertising, or maintaining a professional relationship with one engaging in such advertising.

(2) Gross negligence in the practice of psychology.

(3) Misrepresentation ofprofessional competency by offering to perform services that are unwarranted on the basis of education, training, or experience.

(4) Performance of professional services inconsistent with training, education, or experience.

(5) Conviction of a crime or violation of any law the circumstances of which substantially relate to the circumstances of the professional practice of psychology.

(6) Undertaking or continuing professional services after having been adjudged incompetent by a court of law.

(7) Reporting distorted, erroneous, or misleading psychological information.

(8) Engaging in false, fraudulent, misleading or deceptive billing practices.

(9) Allowing professional judgment to be controlled by another.

(10) Aiding or furthering discrimination on the basis of race, color, sex, creed, national origin, ancestry, handicap or sexual orientation by means of service given to a client.

(11) Practicing or attempting to practice while the licensee has a physical or mental impairment, including impairment related to alcohol or other drugs, which is reasonably related to the licensee's ability to adequately undertake the practice of psychology in a manner consistent with the safety of patient or public.

(12) Revealing facts, data, information, records or communication received from a client in a professional capacity except in the following circunistances:

(a) With the informed consent of the client or the client's authorized representative.

(b) With prior notification to the client at the time the information was elicited of the use and distribution of the information.

(c) If necessary to prevent injury to the client or another person.

(d) Pursuant to the lawful order of a court of law.

(e) Use of case history material for teaching or research purpose, or in textbooks or other literature, provided that proper precautions are taken to conceal the identity of the client.

(f) Where otherwise permitted or required under ss. 51.30 and 146.82, Stats.

(13) Failure to obtain written, informed consent from the client or client's legal representative prior to the use of observation or electronic taping, recording or filming procedures.

(14) Engaging in sexual contact, sexual conduct, or any other behavior which could reasonably be construed as seductive, with:

(a) A client.

(b) A former client within 2 years oftermination of professional services.

(c) A former client beyond *2* years of termination of professional services, unless the licensee can demonstrate that there has been no exploitation of the former client, in light of all relevant factors, including:

1. The length of time which had passed between the termination of professional services and the conduct.

2. The nature and duration of the professional services.

3. The circumstances of termination.

4. The client's personal history.

5. The client's mental status at the time the conduct took place.

6. The likelihood of adverse impact on the client or others.

7. Statements or actions made by the licensee during the course ofprofessional services suggesting or inviting the possibility of a post–termination sexual or romantic relationship with the client.

(14m) Accepting as a client a person with whom the licensee has engaged in sexual contact or sexual conduct.

(15) Failure to provide clients a description of what may be expected in the way of tests, consultation, reports, fees, billing, therapeutic regimen or schedule.

(16) Failure to provide clients a description ofpossible effects of proposed treatment.

(17) Failure to avoid dual relationships or relationships that may impair one's objectivity or create a conflict of interest. Dual relationships include treating employes, supervisees, close friends or relatives.

(18) Failure to conduct an assessment, evaluation, or diagnosis as a basis for treatment consultation.

(19) Employing or claiming to have available secret techniques or procedures that the licensee refuses to divulge.

(20) Engaging in experimental treatment or services without assuring objectivity through keeping adequate records and consulting with colleagues.

(21) In the conduct ofresearch, failure to inform study participants of all features of the research that might reasonably be expected to influence willingness to participate; failure to ensure as soon as possible participants' understanding of the reasons and justification for methodological requirements of concealment or deception in the study; failure to protect participants from physical or mental discomfort, harm or danger, or to notify the participant of such danger; and failure to detect and remove any undesirable consequences to the participants resulting from research procedures.

(22) Failure to inform the client of financial interests which are not obvious and which might accrue to the licensee for referral to or for any use of service, product, or publication.

(23) Refusal upon request to advise the board of the nature of the specialties included within the licensee's practice.

(24) Refusal upon request to cooperate in a timely manner with the board's investigation of complaints lodged against the applicant or licensee of the board. Persons taking longer than 30 days to provide requested information will have the burden of demonstrating that they have acted in a "timely manner."

(25) Impersonation of another person holding a license issued by this or another board.

(26) Allowing another person to use one's license.

(27) Using fraud or deception in applying for a license.

(28) Violation of ch. 455, Stats., or any rule of professional conduct promulgated under ch. 455, Stats.

(29) Failure to notify the board of having a license, certificate, permit or registration granted by this or any other state for the practice of psychology or school psychology limited, restricted, suspended or rcvokcd, or having been subject to other disciplinary action by the licensing or certifying authority thereof.

(30) For licensees of the board who are employed by a public agency and who also offer their services privately:

(a) Failure to inform the client that the client is entitled to the same service from the public agency.

(b) Failure to inform the client that the licensee is an employe of that same public agency.

(c) Failure to avoid a dual relationship.

(31) Failure to notify clients when service will be interrupted.

(32) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice psychology which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original crcdcntial, or the surrender of a credential. whether or not accompanied by findings of negligence or unprofessional conduct.

History: Cr. Register. September, 1991, No. 429, eff. 10–1–91; r. and recr. (14), cr. (14m), Register, August, 1995, No. 476, eff. 9–1–95; **am. (7), cr. (32), Register, June, 1999, No. 5212 eff. 7–1–99.**

Psy 5.02 Actions subsequent to disciplinary proceedings. (1) In disciplinary proceedings that result in stipulation, settlement, reprimand, suspension, revocation, or limitation of a license issued by this board, the standard departmental policies will be followed.

(2) The following steps will be taken by the licensee of the board to protect the welfare of any clients affected by the board's action. These steps may include either or both of the following depending on the needs of the client and the nature of the disciplinary proceedings:

(a) Notification of clients regarding the termination of services by the subject of the board's action.

(b) Facilitation of the transfer of clients to other professionals who will be responsible for the clients' continuing care.

History: Cr. Register. September, 1991, No. 429, eff. 10–1–91; **r. (1) (a) and (b), Register, June, 1999, No. 522, eff. 7–1–99.**

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01 Authority and scope.
RL 1.03 Definitions.
RL 1.04 Examination failure: retake and hearing.
RL 1.05 Notice of intent to deny and notice of denial
RL 1.06 Parties to a denial review proceeding.
RL 1.07 Request for hearing.
RL 1.08 Procedure.
RL 1.09 Conduct of hearing.
RL 1.10 Service.
RL 1.11 Failure to appear.
RL 1.12 Withdrawal of request.
RL 1.13 Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b), Stats.

History: Cr. Register, October. 1985, No. 358, eff. 11–1–85; am., **Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.02 Scope. History: Cr. Register, October. 1985, No. 358, eff. 11–1–85; **r., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

(5) "Department" means the department of regulation and licensing.

(6) "Division" means the division of enforcement in the department.

History: Cr. Register, October, 1985, No. 358. eff. 11–1–85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Rcgister. May, 1988, No. 389; **am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July. 1996, No. 487, eff. 8–1–96.**

RL 1.04 Examination failure: retake and hearing. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.05 Request for hearing. History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in **(2)** (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; **r. Register, July. 1996, No. 487, eff. 8–1–96.**

RL 1.05 Notice of intent to deny and notice of denial. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credcntialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(cj If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2j.

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix TI. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: **Cr., Register, July, 1996, eff. 8–1–96.**

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October. 1985, No. 358, eff. 11–1–85; **renum. from RL 1.04** aad am., **Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July. 1996, No. 487, eff. 8–1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:.

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credcntialing authority or its dcsignce shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the crcdentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under **s.** 227.52, Stats., a rcqucst is denied if a rcsponsc to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person cmploycd as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is pennittcd, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.09 Conduct *of* hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of timc.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of **s.** 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross–examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer dctcrmines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Scrvicc by mail is complete on the date of mailing.

History: Cr. Register. October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.07 and am., Register. July, 1996, No. 487, eff. 8–1–96.**

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the crcdentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the dcpartmcnt has prcparcd a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison. WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison. WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01	Authority.
RL 2.02	Scope; kinds of proceedings.
RL 2.03	Definitions.
RL 2.035	Receiving informal complaints.
RL 2.036	Procedure for settlement conferences.
RL 2.037	Parties to a disciplinary proceeding.
RL 2.04	Commencement of disciplinary proceeding.:.
RL 2.05	Pleadings to be captioned.
RL 2.06	Complaint.
RL 2.07	Notice of hearing.
RL 2.08	Service and filing of complaint, notice of hearing and other papers.
RL 2.09	Answer.
RL 2.10	Administrative law judge.
RL 2.11	Prehearing conference.
RL2.12	Settlements.
RL 2.13	Discovery.
RL 2.14	Default.
RL 2.15	Conduct of hearing.
RL2.16	Witness fees and costs.
RL 2.17	Transcription fees.
RL2.18	Assessment of costs.

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78: am. Register. May, 1982, No. 317, eff. 6–1–82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register. May, 1982, No. 317, eff. 6-1–82; corrections made under s. 13.93(2m)(b) 7., Stats., Register, May, 1988, No. 389; am. Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint'' means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, pennit, certificate or registration granted by a disciplinary authority or having any right to renew a license, pennit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036. in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7). Register, May, 1982, No. 317, eff. 6–1–82: r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), am. (5), (7) and (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, ifnecessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317. eff. 6–1–82; am. (intro.) and (3), Register, June, 1992, No. 438. &. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agrecmcnt is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; renum. **from** RL 2.036 and am., Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278. eff. 3–1–79; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____"and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction: occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; am. (intro.), (3) and (4), Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice ofhearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice ofhearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register. February, 1979. No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter. to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also bc mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business dav after receipt by the disciplinary authority

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affimiatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4), Register. February, 1979, No. 278, eff. 3–1–79; **am.** (1), (3) and (4), Register, **June,** 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or aperson employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authoritypursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; r. and recr. (1), Register. November, 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 **(2m)** (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a Conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1), (5) and (6), cr. (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) Register, May, 1982, No. 317, eff. 6–1–82; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92; am. (1) (b), Register, August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#I). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison. Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date:	(#6)
Time:	(#7)
Location:	Room(#8) 1400 East Washington Ave Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day of, _____20___ .

_____
Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.	RL 3.09	Administrative law judge
RL 3.02	Scope; kinds of proccedings.	RL3.10	Prchearing confcrencc.
RL 3.03	Dcfinitions.	RL3.11	Settlcmcnts.
RL 3.04	Pleadings *to* he captioned.	RL3.12	Discovery.
RL 3.05	Petition for administrative injunction.	RL3.13	Default.
RL 3.06	Notice of hearing.	RL 3.14	Conduct of hearing.
RL 3.07	Service and filing of petition, notice of hearing and other papers	RL3.15	Witness fees and *costs.*
RL 3.05	Answer.	RL3.16	Transcription fees.

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in **ss.** 440.03 (1) and 440.2 l, Stats.

History: Cr. Register, July. 1993, No. 451, eff. &I–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of **s.** RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 5–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN TKE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in **s.** 801.14 (2), Stats. Service by mail **is** complete upon mailing.

(2) Any paper required to be filed with the department may bc mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain tenns the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. **An** administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion. in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judgc to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of apetition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protcctivc orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. **A** stenographic. electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call. examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judgc for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* **A** motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) **An** administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993,No. 451, eff. &I–93.

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, 1993,No. 451, eff. 8–1–93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from the Department of Administration. State Bureau of Procurement, 101 E. Wilson Street. 6th Floor. P.O. Box 1861. Madison, Wisconsin 53707–7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : FOR AN ADMINISTRATIVE; NOTICE OF INJUNCTION INVOLVING : HEARING

(#1):
Respondent.

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in **a** special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box 8935,
Madison. Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of _____, 20__

_____
(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization.
RL 4.02 Definitions.
RL 4.03 Time for review arid determination of credential applications.
RL 4.04 Fees for examinations, reexaminationsand proctoring examinations.
RL 4.05 Fee for test review.
RL 4.06 Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; **am. Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Department" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register, October, 1978, No. **274,** eff. 11–1–78; **renum. (1) to (4) to be (4), (3), (1), (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff.** 8–1–96.

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make **a** determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. **A** delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under **s.** 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, 1992, No. 440, eff. 9–1–92; **renum. from RL** 4.06 **and am., Register, July, 1996, No. 487, eff.** 8–1–96.

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. **A** list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service providcr.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register. October, 1978, No. 274. eff. 11–1–78; r. and recr. Register, May. 1986, No. 365. eff. 6-1–86; am. Register, December, 1986. No. 372, eff. 1–1–87; am. Register, September, 1987, No. 381, eff. 10–1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am. (3), Register, September, 1990. No. 417, eff. 10-1–90; r. and recr. (1) to (3). cr. (4), renum. Figure and **am.** Register, April, 1992, No. 436. eff. 5–1–92; am. (4) Figure, cr. (5), Register, July, 1993. No. 451, eff. 8–1–93; r. and recr. Register, November, 1993, No. 455. eff. 12–1–93; **r. (2), am. (3) (a), (b), (c), *(e)*, (4), (5), Register, July, 1996, No. 487, eff.** 8–1–96.

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992, No. 436. eff. 5–1–92; **am. Register, July,** 1996, **No. 487, eff. 8–1–96.**

RL 4.06 Refunds. (1) A rcfund of all but $10 ofthc applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant cligiblc for a rcfund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call **up** orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, 1978. No. **274,** eff. 11–1–78; am. (2) (intro.), Register, May, 1986, No. 365, eff. 6–1–86; am. (1) **and** (2) (intro.). renum. (2) (c) and (3) to **be** (3) and (4), cr. (5), Register, September, **1987,** No. 381, eff. 10–1–87; r. and recr. (1) **and** (4), Register, **April,** 1992, No. 436, eff. 5–1–92; r. (2), renum. (3) to (5) to be **(2) to** (4), Register, **July.** 1993, No. 451, eff. 8–1–93; **renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01	Authority and intent.
RL 6.02	Scope.
RL 6.03	Definitions.
RL 6.04	Petition far summary suspension.
RL 6.05	Notice ofpetition to respondent.
RL 6.06	Issuance of summary suspension order.
RL 6.07	Contents of summary suspension ordcr.
RL 6.08	Service of summary suspension order.
RL 6.09	Hearing to show cause.
RL 6.10	Commencement of disciplinary proceeding.
RL6.11	Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in **ss.** 227.11(2) (a) and 440.03 (1), Stats., and interprets **s.** 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr Register, May, 1988, *No* 389, eff 6–1–88

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4). Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under **s.** RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioncr, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or **is** likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension ordcr shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, 1988, *No*. **389,** eff. 6–1–88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last–known address of the respondent as indicated in the records of the licensing authority as provided in **s.** 440.11 (2), Stats. as created by 1987 Wis. Act **27.** Notice by mail is complete upon mailing. Notice may also be given by any procedure described in **s.** 801.11, Stats.

History: Cr. Register, May. 1988, No. 389, eff. 6–1–88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under **s.** RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under **s.** RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under **s.** RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, *No*. 389. eff. 6–1–88,

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days ofreceipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May. 1988, **No.** 389, **eff.** 6–1–88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in **s.** 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988. No. 389, eff. 61–88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross–examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. **Register, May,** 1988, No. 389, **eff.** 6–1–88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness. the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness. and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May. 1988, **No.** 389, **eff.** 61–88.

RL 6.11 Delegation. (1) A board may by a two–thirds vote:

(a) Designate under **s.** 227.46 (1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in **s.** RL 6.09; or

(b) Appoint a panel of no less than two–thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in **s.** RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in **s.** 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May. 1988, **No.** 389, **eff.** 61–88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01	Authority and intent.
RL 7.02	Definitions.
RL 7.03	Referral to and eligibility for the procedure.
RL 7.04	Requirements for participation.
RL 7.05	Agreement for participation.
RL 7.06	Standards for approval of treatment facilities or individual therapists.
RL 7.07	Intradepartmental referral.
RL 7.08	Records.
RL 7.09	Report.
RL 7.10	Applicability of procedures to direct licensing by the department.
RL 7.11	Approval of drug testing programs.

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board mcmbcrs to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991. No. 421, eff. 2–1–91; am. (2), Register. July, 1996, No. 487. eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts. which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1), (2), (5), cr. (2a), (2b), r. (6), Register, July, 1996. No. 487, eff. 8–1–96; cr. (6) and (8), Register, January, 2001, No. 541, eff. 2–1–01.

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credeatialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency From a treatment facility or individual therapist approved under s. RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, **January.** 1991, No. 421. eff. 2–1–91; am. (2) to (6), Register, **July, 1996,** No. 487, eff. 8–1–96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under **s.** RL 7.05

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under **s.** RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holdcr to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register, **January,** 1991, No. 421, eff. 2–1–91; **am.** Register, **July,** 1996, No. 487, eff. 8–1–96; **am. (1) (e), Register, January, 2001, No. 541, eff. 2–1–41.**

RL 7.05 Agreement for participation. (1) The agreement for Participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL 2.

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under **s.** RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under **s.** RL 7.07 (3) (a) or violated terms of the agreement in **s.** RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register. January, 1991, No. 421, eff. 2–1–91; **an.** (1) (a) to (g) **and** (2). Register, **July.** 1996, No. 487. eff. 8-1–96; **am. (1) (d), Register, January, 2001, No.** 541, **eff. 2–1–41.**

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, **January,** 1991, No. 421, eff. 2–1–91; **am.** Register, **July.** 1996. No. 487, eff. 8–1–96; **r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who are dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to bc ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–9 I: am. (1), (3) (a) to (d), Register. July, 1996, No. 457. eff. 8–1–96.

RL 7.08 Records. (1) CUSTODIAN. **All** records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE KECOKDS FOK PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of contidcntiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who arc receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under **s.** 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under **s.** 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr. Register, January, 1991. No. 421, eff. 2–1–91; am. (21, Register. July, 1996, No. 457, eff. 8–1–96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, January. 199 I, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the proccdurc and shall designate an cmployec to ocrform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, **July,** 1996, No. 487, eff. 8–1–96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department. programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifymg the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confinnation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) Theprograin shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements arc:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant spccimcns are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within **24** hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results arc confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of dnig tcst results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive tcst rcsults.

(e) The program shall provide chain–of–custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Regirter, January, 2001, No. 541, eff. 2–1–01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records. evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19___.

_____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.	RL 8.05	Request for a review of an adniinistrative warning
RL 8.02	Definitions.	RL 8.06	Procedures.
RL 8.03	Findings before issuance of an administrative warning.	RL 8.07	Transcription fees.
RL 8.04	Issuance of an administrative warning.		

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issuedunder chs. 440 to 480, Stats.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(c) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may bc imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, *eff.* 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request fur review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. **A** credential holder may inspect records under s. **19.35,** Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shalt be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) Jfa transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall bc furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the (disciplinary authority) to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

1) That there is evidence of professional misconduct by {credential holder), to wit:

2) That this misconduct is a first occurrence for (credential holder).

3) That this misconduct is a minor violation of (statute or rule).

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the (disciplinary authority} issues this administrative warning and hereby puts the (credential holder} on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the (disciplinary authority).

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority.
RL 9.02 Scope; nature of proceedings
RL 9.03 Definitions.
RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in s. 440.03. Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b). Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for renewal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9-1-96; **correction in (4) made under s. 13.93 (2m) (b) 7., Stats.**

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.05 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. **Act** 191 **repealed** s. **440.08** (2g) (b), **Stats.**

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES. The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department, The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 (4) **(b)** 3., **Stats., referred to here was repealed by 1997 Wis. Act 237 and a new, unrelated** s. **440.08 (4)** (b) **recreated.**

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

FILING A COMPLAINT

COMPLAINTS AND THE DISCIPLINARY PROCESSED

Board Authority for Professional Discipline

Each of the licensing boards in the department has statutory authority to take disciplinary action against licensees who engage in unprofessional conduct or violate other rules/statutes of the board. Unprofessional conduct typically includes: practicing fraudulently, negligently, or incompetently, practicing while being impaired by alcohol, drugs or mental disability, conviction for a crime related to the licensed practice and similar serious matters.

In taking disciplinary action, boards have the authority to reprimand a licensee, to suspend, revoke, or limit a license. The purposes of professional discipline, as defined by the Wisconsin Supreme court, are: 1) to protect the public, 2) to promote the rehabilitation of the licensee, 3) to deter other licensees from engaging in similar conduct and 4) to publicly express disapproval of certain conduct.

How to File A Complaint

Anyone who wishes to file a complaint against a licensee of a board or a complaint involving activity with the jurisdiction of that board should do so in writing. Preferably a complaint form should be completed. Complaint forms are available either through the department or the Examining Board offices at 1400 East Washington Avenue, Madison, Wisconsin, mailing address, P.O. Box 8935, Madison, Wisconsin, 53708. The complaint forms should be completed in detail, including the who, what, when, and where of a situation. The information should be set forth in chronological order as best as it can be recalled. If written documents are involved, copies should be included.

How the Complaint Is Processed

After a complaint is received, it is logged in the department's Division of Enforcement and then screened to determine whether or not the matter is something over which the board has jurisdiction; and, if so, to identify the statute or rule that may have been violated. If the board does have jurisdiction, the complaint is assigned to an attorney and investigator for investigation.

The attorney and the investigator confer during the course of the investigation. In addition, a member of the board may be assigned as an advisor in the case. Investigative contacts can be made by telephone, letter, personal interview or any combination of those procedures. The investigation involves gathering relevant facts of the case. Persons with knowledge of the case are contacted. This usually includes the person who made the complaint and the person about whom the complaint was made. If treatment records are involved, they will be obtained. Confidentially of the records will be maintained as required by law.

Once the investigation is complete, the investigator, attorney and board advisor review the results of the investigation and come to a preliminary decision on whether the case should be closed with no action taken, or whether formal disciplinary action should be commenced.

If the preliminary determination is for case closure, that recommendation, along with relevant findings, is presented by the investigator to the members of the board in closed session at a scheduled board meeting. If the board concurs, the file is closed by board motion. Letters are then sent to the person who filed the complaint and to the licensee, explaining that the case was closed and the reasons for closure.

If the determination by the investigative team is to commence disciplinary action, the Division of Enforcement attorney repares all necessary documents, including a formal complaint against the licensee, and the matter is scheduled for a gearing.

How The Formal Complaint is Resolved

Disciplinary hearings are conducted by hearing examiners, who are attorneys. While the statutes give the board the authori to preside over hearings without the use of a hearing examiner, most boards request that a hearing examiner be used. Furthermore, if the board members made the decision to issue a complaint, an examiner must be used. This ensures that the prosecutorial and adjudicative functions are separate, and that a fair and impartial decision is made.

The hearing examiner will generally schedule a pre hearing conference between the parties. The major purposes of the pre-hearing conference are to set forth the issues in the Ease, determine what matters can be resolved without the need for formal testimony, and to establish a schedule for bringing the matter to hearing. Some of the cases, that may lead to the issuance of a formal complaint, are resolved by stipulation between the parties. Of course, such stipulations are subject to the approval of the board involved.

If a formal hearing is necessary, in most cases the hearing examiner presides over it. All testimony is under oath and transcribed. The parties are expected to call whatever witnesses are necessary. The process is very much like a trial. The length of the hearings can range from a few hours to several days. Once the hearing is complete, the hearing examiner prepares proposed findings of fact, proposed conclusions of law and a proposed decision. This is filed with the board, which reviews the decision and determines whether to affirm, reverse or amend it. If a member of the board participated in the investigation, that person is not involved in the board's decision on the case.

The board's options in disciplinary matters are: dismissing the com laint, reprimanding the licensee, limiting, suspending or revoking the licensee's license, or, in some instances, assessing a forfeiture against the licensee. Boards do not have the authority to award monetary damages or to get money back that a party may believe is due. If a party is dissatisfied with a board decision, the decision can be appealed to circuit court. A circuit court decision can in turn be appealed to higher courts.

The above steps set forth very generally the process that takes place if a complaint is filed against a licensee of one of the boards attached to the department. Each case is different, and some variations may occur among the boards.

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INDEX

TO THE WISCONSIN STATUTES AND ADMINISTRATIVE RULES
REPRINTED IN THIS BOOKLET

References are to statutes sections or administrative rules. Administrative rules citations begin with the prefix "PSY" or "RL"

SUBJECT	SECTION
Abandonment of a child	948.20
Abused or neglected children	48.981
Acquired immunodeficiency syndrome	252.14
Address change	440.11
Administrative injunctions	RL 3
Administrative law judge	RL 2.10; RL 3.09
Administrative warnings	440.205; RL 8
Advisory committees	440.042
Alcohol, drug abuse, developmental disabilities and mental health act-state	51
Answer	RL 2.09
Application abandonment	PSY 2.015
Application procedures	PSY 2.01; RL 4
Completed applications	RL 4.03(2)
Delay	RL 4.03(3)
Fees	RL 4.04
Refunds	RL 4.06
Test review fee	RL 4.05
Time limits	RL 4.03(1)
Assessment of costs	RL 2.18
Authority	PSY 1.01
Biennial renewal	PSY 4
Bonds	440.02
Cancellation of credential	440.23(4)
Child enticement	948.07
Children's code	48
Children, abused or neglected	48.981
Code of ethics and rules	455.08
Commitment of persons	971.17; 980
Competency proceedings	971.14
Complaint	RL 2.06
Service and filing	RL 2.08
Communicable diseases	252
Conduct	PSY 5
Continuing education requirements	455.065; PSY 4
Costs assessment	440.22
Councils, examining	15.407
Credential renewal	440.08
Credential renewal denial delinquent taxes	RL 9
Credit card payments	440.055
Crimes against children	948
Criminal procedure	971
Custody and physical placement	767.24
Default	RL 2.14; RL 3.13
Definitions	
Abusive conduct	895.73
Administrative injunction	RL 3.03
Agency	880.01(I)
Applicant	PSY 1.02(1)
Board	PSY 1.02(2)
Child	948.01(1)
Client	PSY 1.02(3)
	895.73(1)(b)
Complainant	RL 2.03(1);
Complaint	RL 2.03(2)
Credential	440.01(2)(a)
Department	PSY 1.02(4)
Developmentally disabled person	880.01(2)
Disciplinary authority	RL 2.02(4)
Disciplinary proceeding	RL 2.02(5);
	PSY 1.02(5)
	PSY 5.02
Division	RL 2.03(6);
	RL 3.03(4)
Doctoral degree in psychology	455.01(2)
Examining board	15.01(7);455.01(3)
	440.01(2)(c)
Fee	455.01(3m)
Grant	440.01(b)
Gross negligence	PSY 1.02(6)
Guardian	880.01(3)
Incompetent	880.01(4)
Infirmities of aging	880.01(5)
Informal complaint	RL 2.03(7)
Interested person	880.01(6)
Issue	440.01(c)
Joint legal custody	948.01(1g)
Legal custody	948.01(1r)
Licensed psychologist	455.01(4)
Licensee	RL 2.03(8)
Limit	440.01(d)
Mental harm	948.01(2)
Minor	880.01(7)
Not competent to refuse psychotropic medication	880.01(7m)
One contact hour	PSY 1.02(7)
Other like incapacities	880.01(8)
Petition	RL 3.03(5)
Physical placement	948.01(3M)
Practice of psychology	455.01(5)
Psychotherapy	455.01(6)
Reciprocal credential	440.01(2)(d)
Reprimand	440.01(e)
Respondent	RL 2.03(9);
	RL 3.03(6)
Revoke	440.01(f)
Sadomasochistic abuse	948.01(4)
Service representative	895.73(1)(c)
Settlement conference	RL 2.03(10)
Sexual contact	948.01(5)
Sexual intercourse	948.01(6)
Sexually explicit conduct	948.01(7)
Spendthrift	880.01(9)
Suspend	440.01(h)
The private practice of school psychology	PSY 1.02(8)
Ward	880.01(10)
Delinquency in support payments	440.13
Denial of credential	RL 1; 455.09
Denial of credental renewal	440.08(4)
Department, general duties & powers	440.03
Developmental disabilities, alcohol, drug abuse and mental health act-state	51
Disciplinary:	
Commencement	RL 2.04
Parties	RL 2.037
Pleadings to be captioned	RL 2.05
Proceedings and actions	440.03; 440.20
Disciplinary proceedings	440.20
Commencement of	RL 2.04
Parties	RL 2.037
Pleadings to be captioned	RL 2.05
Disciplinary proceedings; immunity: orders	450.10
Discovery	RL 2.13; RL 3.12
Discrimination related to AIDS	252.14
Display of credential	440.03(8)
Disputes	440.045
Doctoral degree holders - U.S. and Canada	PSY 2.09
Outside U.S. and Canada	PSY 2.13

SUBJECT	SECTION
Domestic abuse assessments	973.055
Drug abuse, alcohol, developmental disabilities, and mental health act - state	51
Duplicate credential	440.05(7)
Duties and powers of the department	440.03
Duties of the secretary	440.04
Enforcement of laws	440.21
Evidence - privileges	905
Crime victim compensation proceedings	905.14
Federal tax return information	905.15
Husband-wife	905.05
Identity of informer	905.10
Interpreters; language; hearing; or speaking impairments	905.015
Law enforcement records	905.09
Lawyer-client	905.03
Political vote	905.07
Required reports	905.02
Trade secrets	905.08
Waiver by voluntary disclosure	905.11
Examination standards and services	440.07; RL 4
Examinations	440.07; 455.045
Claim of examination error	PSY 2.07
Controls	PSY 2.04
Failure and review	PSY 2.06
Fees, standard	440.05; RL 4.04
Passing scores	PSY 2.05
Proctoring for other states	RL 4.04(5) PSY 2.08;
Reexamination	440.06; PSY 2.06 RL 4.04(4)
Refund fees	440.06; RL 4.06
Scheduling	PSY 2.02
Standards and services	440.07; RL 4
Unauthorized assistance	PSY 2.03
Examining board	15.08
Creation	15.405(7)
Duties, general	440.035
Meetings	15.08(3)(a)
Members	15.08(1)
Officers, selection of	15.08(2)
Quorum	15.08(4)
Failure and reexamination	440.06
Fees, standard	440.05; RL 4'
General duties of examining boards	440.035
Guardians and wards	880
Nomination; selection	880.09
Guardianship	48.023
Health care records	146.81
Access to	146.82(2); 146.83
Confidentiality	146.82(1)
Destruction of	146.819'
Preservation of	146.819
Violations of confidentiality/patient access	146.84
Hearing; notice; transcription fees; conduct	RL 2.07; RL 2.15; RL 2.17; RL 3.06; RL 3.14
Hearing request	RL 1.07
HIV restrictions on use of a test	252.15
Honesty testing devices	905.065
Husband-wife privilege	905.05
Impaired professional procedures	RL 7
Identity of informer	905.10
Incest with a child	948.06
Informal complaints, receiving	RL 2.035
Injunctive relief	455.10
Interpreters; language; hearing; speaking	905.015
Judicial review	440.25
Juvenile adjudged delinquent, disposition of	938.34
Law enforcement records	905.09
Lawyer-client privilege	905.03
License	
Duplicate	440.05(7)
Wall certificate, display	440.03(7)(8)
License required to practice psychology	455.02; 455.04
Exceptions	455.02(2m)

SUBJECT	SECTION
Licensure of psychologists	455.04
Limitation	455.09
Name change	440.11
Neglecting a child	48.981; 948.21
Notice of denial	RL 1.05
Notice of intent to deny	RL 105
Penalty	455.11
Physical abuse of a child	948.03
Physical placement and custody	767.24
Pleadings and hearings, procedure	RL 2
Pleadings to be captioned	RL 3.04
Political vote	905.07
Powers and duties of the department	440.03
Prehearing conference	RL 2.11; RL 3.10
Private practice school psychologists	455.04; PSY 3
Application procedure	PSY 3.01
Claim of examination error	PSY 3.09
Controls	PSY 3.06
Examination scheduling	PSY 3.04
Failure and review	PSY 3.08
Passing grade	PSY 3.07
Reciprocal	PSY 3.03
Reexamination	PSY 3.10
Requirements	PSY 3.02
Unauthorized assistance	PSY 3.05
Privileges - evidence	905
Crime victim compensation proceedings	905.14
Federal tax return information	905.15
Identify of informer	905.10
Law enforcement records	905.09
Political vote	905.07
Trade secrets	905.08
Waiver by voluntary disclosure	905.11
Procedural information	19.34
Professional conduct	PSY 5.01
Protective service system	55
Psychologists	PSY 2
Application abandonment	PSY 2.015
Application procedures	PSY 2.01
Claim of examination error	PSY 2.07
Controls	PSY 2.04
Doctoral degrees outside us & Canada	PSY 2.13
Examination scheduling	PSY 2.02
Failure and review	PSY 2.06
Passing scores	PSY 2.05
Reciprocal requirements	PSY 2.12
Reexamination	PSY 2.08
Requirements holders of doctoral degrees	PSY 2.09
Unauthorized assistance	PSY 2.03
Public health dispensaries	252.10
Public health emergency, reporting potential causes	440.142
Reciprocal credential	440.01(2)(d); PSY 2.12
Reexaminations	440.06
Refunds	440.06; RL 4.06
Reinstatement of credential	440.23(5); PSY 4
Renewal credential	440.08; 455.06; PSY 4
Renewal fees	455.07
Reprimand	455.09
Revoke credential	440.01(f); 455.09
Rules and code of ethics	455.08
Secretary, duties	440.04
Service representative	895.73
Settlements; conferences; procedure	RL 2.036; RL 2.12; RL 3.11
Sex crimes law	975
Sexual assault	940.225; 948.02
Sexual assault of a child	948.02
Sexual exploitation by a therapist	895.70; 940.22
Sexual exploitation of a child	948.05
Sexually violent person commitments	980
Summary suspensions	RL 6
State alcohol, drug abuse, developmental	

SUBJECT	SECTION
disabilities and mental health act	51
Support payments	440.13
Suspend credential	440.01(h); 455.09
Tax delinquency	440.12
Temporary practice	455.03
Trade secrets	905.08
Transcription fees	RL 2.17; RL 3.16
Unlicensed practice, penalties	440.21
Use of titles	455.02(3m)
Visitation rights of certain persons	767.245
Wards and guardians	880
Witness fees and costs	RL 2.16; RL 3.15

SUBJECT	SECTION